SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 238

UNITED STATES, APPELLANT,

vs.

SEALY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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No. 280—Letter dated April 13, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Reading, Pa. (excerpts)	627E	557
No. 281—Letter dated May 23, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Reading, Pa.	629E	558
No. 282—Letter dated June 6, 1951 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Lawrence, Chicago, Ill.	630E	559
Volume III—Exhibits		
No. 285—Letter dated May 7, 1951 from E. H. Bergmann of Sealy, Incorporated to Fisher Products Company, Chester, Pa.	631E	561
No. 289—Letter dated July 10, 1951 from Irving L. Fisher of Fisher Products Company to Sealy, Inc., Massillon, Ohio	633E	563
No. 290—Letter dated July 18, 1951 from E. H. Bergmann of Sealy, Incorporated to Fisher Products Company, Chester, Pa.	634E	565
No. 291—Letter dated April 10, 1952 from Linda Ballard of Sealy Company of the S.E. to Sealy, Incorporated, Chicago, Ill.	635E	566
No. 295—Letter dated July 15, 1952 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Richmond, Va.	636E	568
No. 296—Letter dated July 17, 1952 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	638E	569
No. 297—Letter dated August 4, 1952 from J. W. Moffitt, Jr. of Peerless Mattress Company to Sealy, Inc., Chicago, Ill.	640E	572
No. 298—Letter dated August 8, 1952 from E. H. Bergmann to J. R. Lawrence	644E	576
No. 299—Letter dated August 18, 1952 from J. R. Lawrence of Sealy, Incorporated to Peerless Mattress Co., Inc., Lexington, N.C.	645E	577
No. 300—Letter dated November 11, 1952 from J. V. Moffitt, Jr. of Peerless Mattress Company to Sealy, Incorporated, Chicago, Ill.	[illegible]	580

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 300-A—Letter from J. R. Lawrence to J. V. Moffitt, Jr., Lexington, N.C.	650E	582
No. 301—Letter dated November 25, 1952 from J. V. Moffitt, Jr. of Peerless Mattress Company to Sealy, Incorporated, Chicago, Ill.	654E	587
No. 302—Letter dated December 24, 1952 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Richmond, Va.	655E	589
No. 303—Letter dated December 29, 1952 from Sidney Sutherland of Sealy Mattress Company to Mr. J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	656E	590
No. 304—Letter dated January 23, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md. (excerpts)	659E	593
No. 305—Letter dated January 26, 1953 from Joseph Rudick of Sealy Mattress Co. to Mr. Earl H. Bergmann of Sealy, Inc., Cleveland, Ohio	661E	594
No. 306—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	663E	596
No. 307—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Virginia	664E	597
No. 308—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	665E	598
No. 308-A—Letter dated February 9, 1953 from E. H. Bergmann to Joseph Rudick	666E	599
No. 309—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. T. C. Engelhardt of Sealy Mattress Company, Reading, Pa.	667E	600
No. 310—Letter dated February 17, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	668E	601
No. 311—Letter dated February 20, 1953 from E. H. Bergmann to Mr. J. R. Lawrence	669E	601
No. 312—Letter dated February 12, 1953 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Inc.	670E	602

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 313—Letter dated February 12, 1953 from Sidney Sutherland of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated	671E	603
No. 314—Letter dated February 16, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company	672E	604
No. 315—Letter dated February 19, 1953 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Incorporated	673E	605
No. 316—Letter dated March 6, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. T. C. Engelhardt, Sr. of Sealy Mattress Company, Reading, Pa.	674E	606
No. 317—Letter dated August 29, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Detroit, Michigan	676E	608
No. 31—Letter dated August 16, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Morris A. Kaplan of Sealy Mattress Co., Chicago, Ill.	677E	609
No. 319—Letter dated September 15, 1954 from C. B. McGillivray of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	679E	611
No. 320—Letter dated September 28, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. C. B. McGillivray of Sealy Mattress Company, Chicago, Ill.	680E	612
No. 321—Letter dated October 6, 1954 from C. B. McGillivray of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	682E	614
No. 322—Letter dated October 7, 1954 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	684E	616
No. 323—Letter dated October 11, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. C. B. McGillivray of Sealy Mattress Company, Chicago, Illinois	686E	618
No. 324—Letter dated October 29, 1954 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	688E	620
No. 325—Inter Factory Correspondence of Sealy, Incorporated, dated January 12, 1955 from J. R. Lawrence to Mr. Johnson	689E	621

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued.		
No. 326—Letter dated January 26, 1955 from J. R. Lawrence of Sealy, Incorporated to Mr. Joseph F. Haas of Haas, Holland & Blackshear, Atlanta, Ga.	690E	622
No. 327—Letter dated June 9, 1956 from Peter D. Brown of Sealy Mattress Company to Mr. Earl Bergmann of Sealy, Incorporated, Chicago, Ill.	691E	623
No. 328—Letter dated June 12, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. M. A. Kaplan of Sealy Mattress Company, Chicago, Ill.	692E	624
No. 329—Letter dated June 15, 1956 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	693E	625
No. 330—Letter dated December 4, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Kansas City, Mo.	694E	627
No. 331—Letter dated January 14, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Edgar Haas, Sr. of Slumber Products Corporation, Memphis, Tenn.	695E	628
No. 332—Letter dated January 19, 1953 from Ross S. Rosenberg of Sealy Mattress Company to Sealy Mattress Company (excerpts)	697E	630
No. 333—Letter dated January 14, 1953 from Morris A. Kaplan of Sealy Mattress Company to Mr. Ross Rosenberg of Sealy Mattress Company, St. Paul, Minn.	699E	631
No. 334—Letter dated January 27, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. H. L. Forbes of Sealy Mattress Company, Louisville, Ky.	702E	633
No. 335—Letter dated January 28, 1953 from Harry L. Forbes to Mr. J. R. Lawrence of Sealy, Inc., Chicago, Ill.	703E	634
No. 336—Letter dated June 26, 1953 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Sealy Incorporated, Chicago, Ill.	704E	635
No. 337—Letter dated June 29, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	705E	636
No. 338—Letter dated July 9, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc.	706E	637

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 338-A—Letter dated July 8, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. Jules Shapiro of Central Mattress Company, Omaha, Nebraska	707E	638
No. 339—Letter dated July 13, 1953 from Edgar C. Haas of Slumber Products Corporation to Sealy, Incorporated, Chicago, Ill.	708E	640
No. 342—Letter dated September 16, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. Edgar Haas of Sealy Mattress Company, Memphis, Tenn.	709E	641
No. 343—Letter dated September 29, 1953 from Robert B. Conover of Slumber Products Corporation to Mr. J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	710E	642
No. 344—Letter dated October 13, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Robert B. Conover of Sealy Mattress Company, Memphis, Tenn.	711E	643
No. 345—Letter dated July 23, 1953 from E. H. Bergmann to Mr. J. R. Lawrence with an enclosure of memorandum dated July 10, 1953 from J. R. Lawrence to E. H. Bergmann	712E	644
No. 346—Letter dated October 9, 1953 from C. B. McGillivray of Sealy Mattress Company to Mr. Marcus Haas of Sealy Mattress Company, Memphis, Tenn.	714E	646
No. 347—Letter dated January 25, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va.	716E	648
No. 348—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	717E	649
No. 349—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	718E	651
No. 350—Letter dated January 27, 1953 from Joseph Rudick of Sealy Mattress Company to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va.	719E	652

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 355—Letter dated January 28, 1954 from Joseph Rudick of Sealy Mattress Company to Mr. Irving Fisher of Sealy Mattress Company, Chester, Pa.	720E	653
No. 356—Letter dated February 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	721E	654
No. 357—Letter dated June 4, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Earl H. Bergmann, Sealy Incorporated, Chicago, Ill.	722E	655
No. 358—Letter dated June 10, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Co., Baltimore, Md.	723E	656
No. 359—Letter dated June 15, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Irving L. Fisher, Chester, Pa.	724E	657
No. 360—Letter dated July 14, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Irving L. Fisher of Sealy Mattress Co., Chester, Pa.	725E	658
No. 361—Letter dated July 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Earl Bergmann of Sealy, Incorporated, Cleveland, Ohio	726E	659
No. 364—Letter dated October 4, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. Louis Haas of Sealy Mattress Company, Ft. Worth, Texas	727E	661
No. 366—Letter dated October 19, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. R. S. Rogers of Sealy Mattress Company, Brenham, Texas	728E	662
No. 367—Letter dated October 21, 1954 from R. S. Rogers of Sealy Mattress Company to Mr. Roger Lawrence of Sealy, Incorporated, Chicago, Illinois	729E	663
No. 372—Letter dated April 18, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	730E	664
No. 373—Letter dated April 28, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	731E	665

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 374—Letter dated September 16, 1955 from Ross S. Rosenberg of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy, Inc., Chicago, Ill.	732E	666
No. 375—Letter dated September 19, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ross S. Rosenberg of Sealy Mattress Company, St. Paul, Minn.	734E	668
No. 376—Letter dated September 22, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	736E	670
No. 377—Letter dated September 23, 1955 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	737E	671
No. 378—Letter dated October 3, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	739E	673
No. 379—Letter dated October 12, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. J. L. Metcalfe of Sealy Mattress Company, Bluefield, Va. and Mr. Wm. A. Edie of Sealy Mattress Company, Louisville, Ky.	740E	674
No. 380—Letter dated October 14, 1955 from William A. Edie of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	741E	675
No. 381—Letter dated October 21, 1955 from William A. Edie of Sealy Mattress Co. to Mr. Earl Bergmann of Sealy, Inc., Chicago, Ill.	742E	676
No. 382—Letter dated October 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	743E	677
No. 383—Letter dated May 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Louis J. Gross of Sealy Mattress Company, Rochester, N.Y.	745E	679
No. 384—Letter dated May 23, 1956 from E. Carter Logan of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	747E	681
No. 385—Letter dated June 4, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. C. Logan of Sealy Mattress Company, Louisville, Ky.	749E	683

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 386—Letter dated June 8, 1956 from Edgar C. Haas Sr. of Sealy Southeast to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	760E	684
No. 387—Letter of June 12, 1956 from E. H. Bergmann of Sealy Incorporated to Mr. Edgar C. Haas Sr., of Sealy Mattress Company	761E	685
No. 388—Letter dated June 25, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph F. Haas, Atlanta, Ga.	762E	686
No. 389—Letter dated August 27, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	763E	687
No. 390—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Company, Lexington, N.C.	765E	689
No. 391—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Company, Baltimore, Md.	766E	690
No. 392—Letter dated November 23, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	767E	691
No. 393—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Co., Lexington, N.C.	770E	694
No. 394—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joe Rudick of Sealy Mattress Co., Baltimore, Md.	772E	695
No. 395—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 12, 1943 from J. R. Haas to Mr. W. J. Craig	774E	697
No. 396—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 8, 1943 from J. R. Haas to Mr. W. J. Craig	775E	698
No. 397—Letter dated July 31, 1944 from Herbert H. Neilson of Sealy Mattress Company to Sealy Mattress Company, Pittsburgh, Pa.	776E	699

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 398—Letter dated August 7, 1944 from W. W. Llewellyn, Jr. of Fort Pitt Bedding Company & Sealy Mattress Company to Mr. Herbert Neilson of Sealy Mattress Company, Cincinnati, Ohio	777E	700
No. 399—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to Mr. John Brody, Sealy Mattress Company, Chicago, Illinois	778E	702
No. 400—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to the Sealy Mattress Company, Pittsburgh, Pa.	779E	703
No. 401—Letter dated September 23, 1944 from J. M. Brody, Jr. of Sealy, Inc. to Mr. Herbert H. Neilson of Sealy Mattress Co., Cincinnati, Ohio	780E	704
No. 402—Communication dated September 23, 1944 from J. M. Brody, Jr. to Mr. J. R. Haas, "Ohio Boundary Line of Sealy at Cincinnati and Pittsburgh"	781E	706
No. 403—Letter dated September 23, 1944 from Sealy, Inc. to Mr. W. W. Llewellyn, Jr. of Sealy Mattress Co., Pittsburgh, Pa.	782E	707
No. 404—Letter dated September 28, 1944 from W. J. Craig of Sealy, Incorporated to Mr. J. R. Haas	783E	709
No. 409—Letter dated September 16, 1949 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Cleveland, Ohio	784E	710
No. 410—Letter dated May 27, 1950 from Ben Rosenfeld of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy Mattress Company, Cleveland, Ohio	785E	711
No. 411—Letter dated November 16, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	787E	713
No. 412—Letter dated January 8, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	788E	714
No. 413—Letter dated July 24, 1952 from J. J. Willens, Sealy Mattress Co. of Southern California to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	789E	715

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 413-A—Letter dated July 29, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	792E	718
No. 413-B—Letter dated August 26, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Los Angeles, Calif.	793E	719
No. 414—Letter dated December 8, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	794E	720
No. 415—Letter dated March 31, 1953 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	795E	721
No. 415-A—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc. to Harry B. Forbes, Sealy Mattress Co., Louisville, Ky.	797E	723
No. 415-B—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	798E	723
No. 416—Memorandum dated May 12, 1953 from R. S. Logan to Mr. Bergmann	799E	724
No. 417—Letter from H. L. Forbes, Logan Co., Louisville, Ky. to E. H. Bergmann, Sealy, Inc. dated May 12, 1953	800E	724
No. 417-A—Letter dated May 13, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	802E	726
No. 418—Letter dated May 15, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Ill. to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	804E	728
No. 419—Letter dated May 20, 1953 from Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	806E	730
No. 420—Letter dated May 19, 1953 from E. H. Bergmann to H. M. Forbes, Sealy Mattress Co., Louisville, Ky.	808E	732
No. 421—Letter dated May 20, 1953 from E. H. Bergmann to H. L. Forbes, Sealy Mattress Co., Louisville, Ky.	809E	733
No. 422—Memorandum from J. R. Lawrence to E. H. Bergmann dated January 14, 1954	811E	734
No. 423—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois	812E	736
No. 424—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to J. R. Lawrence, Sealy, Inc., Chicago, Ill.	813E	737

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 425—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co., to Sealy, Inc., Cleveland, Ohio	814E	738
No. 426—Letter dated January 28, 1954 from C. B. McGillivray, Sealy, to R. B. Swearingen, Sealy Mattress, Louisville, Ky.	815E	739
No. 427—Telegram dated February 5, 1954 from Earl Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy, Chicago, and R. B. Swearingen, Sealy, Louisville, Ky.	816E	740
No. 428—Telegram dated February 8, 1954 from R. B. Swearingen, Logan Co., to E. H. Bergmann, Sealy, Inc.	817E	740
No. 429—Letter dated February 5, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	818E	741
No. 430—Letter dated March 15, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGillivray, Sealy, Chicago, Ill.	820E	743
No. 431—Letter dated February 16, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	821E	744
No. 432—Agreement dated April 2, 1954 between Sealy Mattress of Chicago and Sealy Mattress of Louisville re Pearsons Furniture & Music Co. of Indianapolis	823E	746
No. 433—Letter dated March 22, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGillivray, Sealy, Chicago, Ill.	824E	748
No. 434—Letter dated March 25, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	825E	749
No. 435—Letter dated April 2, 1954 from C. B. McGillivray, Sealy, Chicago, Illinois to R. B. Swearingen, Sealy, Louisville, Ky.	827E	751
No. 436—Letter dated April 8, 1954 from R. L. Howard, Logan Co. to Earl Bergmann, Sealy, Inc., Cleveland, Ohio	829E	753
No. 437—Letter dated April 19, 1954 from E. H. Bergmann, Sealy, Inc. to R. L. Howard, Sealy, Louisville, Ky.	832E	756
No. 438—Letter dated February 14, 1955 from Wm. A. Edie, Louisville, Ky. to C. B. McGillivray, Sealy, Chicago, Ill.	833E	757

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 439—Letter dated February 15, 1955 from C. B. McGillivray, Chicago, Ill. to Bill Edie, Sealy, Louisville, Ky.	834E	758
No. 440—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky. and C. B. McGillivray, Sealy, Chicago, Ill.	835E	759
No. 441—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill. and Wm. A. Edie, Sealy, Louisville, Ky.	836E	760
No. 442—Letter dated February 21, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	837E	761
No. 443—Letter dated February 24, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	838E	762
No. 444—Letter dated February 27, 1955 from W. A. Edie, Sealy, Louisville, Ky. to Earl Bergmann, Cleveland, Ohio with attachments	839E	763
No. 445—Telegram dated March 2, 1955 from Earl Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	843E	769
No. 446—Letter dated March 2, 1955 from C. B. McGillivray, Sealy, Chicago, Ill. to Earl Bergmann, Sealy, Chicago, Ill.	844E	769
No. 447—Letter dated April 11, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	846E	771
No. 447-A—Agreement dated January 1, 1955 between Sealy of Chicago and Sealy of Louisville, Ky.	847E	772
No. 448—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	848E	773
No. 449—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	849E	774
No. 450—Letter dated June 8, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	850E	775
No. 451—Letter dated August 3, 1955 from E. H. Bergmann, Sealy to E. C. Logan, Sealy, Louisville, Ky.	851E	776

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 452—Letter dated January 11, 1956 from Robert L. Howard, Controller to Ray Garland, Pearsons, Chicago, Ill.	854E	778
No. 453—Letter dated October 17, 1956 from Fielden Woodward, Woodward, Hobson & Fulton, Louisville, Ky. to E. H. Bergmann, Sealy, Inc.	855E	779
No. 454—Letter dated October 29, 1956 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago, Ill.	858E	782
No. 455—Letter dated November 8, 1956 from E. C. Logan, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	859E	783
No. 456—Letter dated March 12, 1953 from J. R. Lawrence, Sealy, Inc. to H. L. Forbes, Sealy, Louisville, Ky.	861E	785
No. 457—Memorandum from J. R. Lawrence to E. H. Bergmann, dated April 14, 1953	862E	786
No. 458—Letter dated October 14, 1953 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	863E	787
No. 459—Letter from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland, Ohio, dated December 24, 1953	865E	789
No. 460—Letter from R. G. Culp, Sealy, Pittsburgh, to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	866E	790
No. 461—Letter dated January 12, 1954 from E. H. Bergmann, Sealy, Inc. to Sealy of Pittsburgh	867E	792
No. 461-A—Letter dated May 18, 1954 from E. H. Bergmann, Sealy, Inc. to Max Lewis, Sealy, Paterson, N.J.	869E	793
No. 461-B—Letter from M. Lewis, Sealy, Paterson, N.J. to E. H. Bergmann, Sealy, Inc., dated May 20, 1954	870E	794
No. 462—Letter dated July 19, 1954 from Morris A. Kaplan, Sealy, Chicago to Marcus Haas, Sealy, Memphis, Tenn.	872E	795
No. 463—Letter dated July 21, 1954 from M. L. Haas, Sealy Company of the Southeast to Sealy, Chicago, Ill.	873E	796
No. 464—Letter dated July 26, 1954 from Morris A. Kaplan, Sealy, Chicago, Ill. to H. N. Ryden, Sealy, Des Moines, Iowa	875E	798

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 465—Letter dated August 3, 1954 from H. N. Ryden, Sealy, Des Moines to Morris A. Kaplan, Sealy, Chicago, Ill.	877E	801
No. 466—Letter dated August 10, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Chicago; Harry Ryden, Des Moines; Marcus Haas, Memphis; and P. D. Brown, Detroit	878E	802
No. 467—Letter dated August 12, 1954 from H. N. Ryden, Sealy, Des Moines to Earl H. Bergmann, Sealy, Inc.	880E	804
No. 468—Letter dated August 13, 1954 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	881E	805
No. 469—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Harry Ryden, Sealy, Des Moines	882E	806
No. 470—Letter dated August 19, 1954 from M. L. Haas, Sealy, Memphis to Sealy, Inc., Cleveland	883E	807
No. 471—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville	884E	808
No. 472—Letter dated September 7, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville, Ky.	885E	809
No. 473—Letter dated September 9, 1954 from "Leon", Sealy, Louisville to Ralph Swearingen	886E	810
No. 474—Letter dated September 13, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc.	887E	812
No. 475—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph B. Swearingen, Sealy, Louisville	888E	814
No. 476—Letter dated August 24, 1954 from J. R. Rudick, Sealy, Baltimore to Earl Bergmann, Sealy, Inc. with attached letter dated August 24, 1954 from J. R. Rudick to Eugene Kligman, Sealy, Brooklyn	889E	815
No. 477—Letter dated August 26, 1954 from E. H. Bergmann, Sealy, Inc. to Joseph Rudick, Sealy, Baltimore, Md.	892E	818
No. 478—Letter dated September 15, 1954 from M. L. Haas, Sealy, Memphis to Louis G. Haas, Sealy of the Southwest	893E	819
No. 479—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to C. McGillivray, Sealy, Chicago, Ill.	894E	820

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 480—Letter dated December 28, 1954 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	896E	822
No. 481—Letter dated December 30, 1954 from Ernest M. Wuliger, Sealy, Cleveland, to H. F. Kaufman, Sealy, Pittsburgh	897E	823
No. 483—Letter dated January 7, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	898E	824
No. 484—Letter dated January 7, 1954 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	899E	825
No. 485—Letter dated January 10, 1955 from (?) to Ernest	900E	826
No. 486—Letter dated January 13, 1955 from Ernest M. Wuliger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc.	901E	828
No. 487—Letter dated January 14, 1955 from E. H. Bergmann, Sealy, Inc. to Ernest M. Wuliger, Sealy, Cleveland, Ohio	902E	829
No. 488—Letter dated January 17, 1955 from Ernest M. Wuliger, Ohio Mattress Co., Cleveland to E. H. Bergmann, Sealy, Inc., Cleveland	904E	831
No. 489—Letter dated February 17, 1955 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	905E	833
No. 490—Letter dated March 11, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	907E	835
No. 491—Memorandum dated March 17, 1955 from Kay K. Kaplan to Mr. Bergmann	908E	836
No. 492—Letter dated March 17, 1955 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	910E	837
No. 493—Letter dated February 10, 1955 from C. B. McGillivray to Bill Edie, Logan Company, Louisville, Ky.	911E	838
No. 494—Letter dated June 20, 1955 from Roy B. Unger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc., Chicago	912E	839
No. 495—Letter dated July 6, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland	913E	840
No. 496—Letter dated August 9, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland, and J. DiSalvo, Sealy, Pittsburgh	914E	841

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 497—Letter dated July 25, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago	915E	842
No. 498—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	916E	843
No. 499—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	917E	844
No. 500—Letter dated August 8, 1955 from Morris A. Kaplan, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	918E	845
No. 501—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	919E	846
No. 502—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	920E	847
No. 503—Letter dated September 20, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	921E	848
No. 504—Letter dated September 22, 1955 from D. B. Embree, Sealy, Memphis, to E. H. Bergmann, Sealy, Inc., Chicago	922E	849
No. 505—Letter dated October 15, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc. with attached catalog sheet of Harrison Wholesale Company	923E	850
No. 506—Letter dated October 18, 1955 from E. H. Bergmann, Sealy, Inc. to D. B. Embree, Sealy, Memphis	925E	853
No. 507—Letter dated August 18, 1955 from A. Eisenberg, Sealy, New York to Max Lewis, Sealy, Paterson, N.J.	926E	854
No. 508—Letter dated August 24, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Brooklyn	927E	855
No. 509—Letter dated August 29, 1955 from Eugene Kligman, Sealy, New York to Earl Bergmann, Sealy, Inc.	928E	856
No. 510—Letter dated September 19, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Sealy, Brooklyn	929E	857

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 511—Letter dated November 2, 1955 from Eugene Kligman, Sealy, Brooklyn to Earl Bergmann, Sealy, Inc. Chicago	930E	858
No. 512—Letter dated October 26, 1955 from Fred Weintraub, Darling Distributing Corp., N.Y. to Gene Kligman, Sealy, Brooklyn	932E	860
No. 513—Letter dated September 7, 1955 from J. R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	933E	861
No. 514—Letter dated May 21, 1956 from J. R. Rudick, Sealy, Baltimore to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	935E	863
No. 515—Letter dated April 18, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	936E	864
No. 516—Letter dated April 13, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	938E	866
No. 517—Letter dated September 26, 1955 from Sidney Sutherland, Sealy, Richmond, Va. to Joe Moffitt, Sealy, Lexington, N.C.	941E	869
No. 518—Letter dated October 14, 1955 from J. V. Moffitt, Jr., Sealy, Lexington, N.C. to Sidney Sutherland, Sealy, Richmond, Va.	942E	870
No. 519—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	944E	872
No. 520—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	945E	873
No. 521—Letter dated July 5, 1956 from Joseph R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc.	946E	874
No. 522—Letter dated February 29, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	948E	876
No. 523—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	949E	877
No. 524—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	950E	878
No. 525—Letter dated March 12, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	951E	879

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 526—Letter dated May 7, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	952E	880
No. 527—Letter dated May 8, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	953E	881
No. 528—Letter dated December 4, 1956 from Edgar C. Haas, Jr., Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	954E	882
No. 529—Letter dated December 17, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar C. Haas, Jr., Sealy, Memphis	955E	883
No. 530—Letter dated December 18, 1956 from E. H. Bergmann, Sealy, Inc. to J. L. Metcalfe, Sealy, Bluefield, Va.	956E	884
No. 531—Letter dated December 26, 1956 from J. L. Metcalfe, Sealy, Bluefield, Va. to E. H. Bergmann, Sealy, Inc.	957E	885
No. 532—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar Haas, Jr., Sealy, Memphis, Tenn.	958E	886
No. 533—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to R. G. Culp, Sealy, Pittsburgh	959E	887
No. 534—Letter dated December 31, 1956 from R. G. Culp, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	960E	888
No. 601—Minutes of the Sealy Board of Directors Meeting, held at Pittsburgh, Pa., November 4, 1938 (excerpts)	961E	889
No. 638—Minutes of Reconvened Meeting of Sealy, Inc. Board of Directors, held at San Souci Hotel, Miami Beach, Florida, April 7, 1954 (excerpts)	968E	890
No. 662—Minutes of the Advertising & Merchandising Committee Meeting in Chicago, Ill., December 11, 1956 (excerpts)	972E	891
No. 664—Minutes of the Advertising & Merchandising Committee Meeting in New York, January 26, 1957 (excerpts)	978E	896
No. 741—Bulletin from J. R. Lawrence to all Sealy Licensees. Subject: Resume of royalty payments. Dated May 29, 1952 (excerpts)	984E	900

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 753—Bulletin from E. H. Bergmann to all Sealy Licensees. Subject: Programs of procedure approved and adopted by the Board of Directors. Dated May 28, 1954	986E	901
No. 777—Bulletin from E. H. Bergmann to all Sealy plants. Subject: Specification and cost committees for 1956. Dated February 17, 1956	989E	904
No. 816—Letter from Ernest M. Wuliger to E. H. Bergmann. Dated February 11, 1953	990E	905
No. 817—Letter from H. F. Knufman to E. H. Bergmann. Dated February 18, 1953	991E	906
No. 887—Letter from J. V. Moffitt, Jr. to E. H. Bergmann. Dated May 4, 1956	992E	908
No. 878—Letter from E. H. Bergmann to J. V. Moffitt, Jr., dated May 8, 1956	993E	909
No. 932—Minutes of Executive Committee Meeting, held William Penn Hotel, Pittsburgh, Pa., December 14, 1936 (excerpts)	994E	910
No. 933—Minutes of Executive Committee Meeting, held Stevens Hotel, Chicago, Ill., January 7, 1937 (excerpts)	999E	913
No. 934—Minutes of Board of Directors Meeting, held Stevens Hotel, Chicago, Ill., January 8, 1937 (excerpts)	1002E	916
No. 937—Minutes of the Board of Directors Meeting, held Palmer House, Chicago, Ill., June 30 and July 1, 1937 (excerpts)	1004E	916
No. 938—Minutes of the Stockholders Meeting of Sealy, Inc., held Palmer House, Chicago, Ill., July 2 and 3, 1937 (excerpts)	1006E	917
No. 939—Alphabetical list of Stockholders, December 6, 1937 and Sealy Annual Meeting, held Palmer House, Chicago, Ill. Board of Directors, December 7, 1937 (excerpts)	1008E	918
No. 940—Sealy Stockholders Meeting, held Palmer House, Chicago, Ill., December 7, 1937 (excerpts)	1012E	920
No. 941—Minutes of Executive Committee Meeting, held Hotel George Washington, W. Palm Beach, Fla., February 21 and 22, 1938 (excerpts)	1022E	923
No. 946—Minutes of the Semi-Annual Meeting of Members and Stockholders of Sealy, Incorporater, held Pursuant to Notices Duly Mailed, at the Congress Hotel, Chicago, Illinois, July 2, 1941 (excerpts)	1028E	924

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 950—Proceedings of Licensee Meeting Sealy, Inc., held Palmer House, Chicago, Illinois, November 28, 1942 (excerpts)	1029E	925
No. 951—Minutes of the Meeting of the Licensees of Sealy Incorporated, held at the Chicagoan Hotel, December 4, 1943	1031E	926
No. 956—Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 23, 1945 (excerpts)	1033E	928
No. 957—Minutes of the Meeting of the Licensees of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 25, 1945 (excerpts)	1035E	928
No. 958—List of Stockholders, Sealy, Incorporated, March 9, 1947	1037E	929
No. 962—Minutes of the Meeting of the Stockholders of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 21, 1947 (excerpts)	1038E	930
No. 964—Minutes of Meeting of Licensees of Sealy, Incorporated, held at Furniture Mart, July 2, 1948 (excerpts)	1040E	931
No. 970—Minutes of the Board of Directors of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 11, 1950 (excerpts)	1044E	932
No. 972—Minutes of Sealy Incorporated Board of Directors Meeting, held at the American Furniture Mart, Chicago, Illinois, November 9, 1951 (excerpts)	1046E	933
No. 973—Minutes of Sealy, Incorporated Stockholders Meeting, held at American Furniture Mart, Chicago, Ill., November 10, 1951	1050E	936
No. 974—Minutes of Sealy, Incorporated New Board of Directors Meeting, held at the American Furniture Mart, Chicago, November 10, 1951 (excerpts)	1051E	938
No. 976—Minutes of Sealy, Incorporated Board of Directors Meeting, held at Conrad Hilton Hotel, Chicago, Ill., November 21, 1952 (excerpts)	1054E	939
No. 978—Sealy, Incorporated Stockholders List	1062E	943
No. 980—List of Sealy, Incorporated Stockholders, September 23, 1955	1063E	945
No. 981—By-Laws of Sealy, Incorporated, November 11, 1955	1064E	946

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 985—List of Sealy, Incorporated Stockholders, September 26, 1956	1074E	957
No. 991-D—Sealy, Inc.—Officers and Directors, 1956-1957	1075E	958
No. 991-E—Sealy, Incorporated 1957 Committees	1076E	960
No. 991-F—Names, addresses and position of Sealy, Incorporated Employees, 1951 To-Date	1077E	962
No. 991-G—Names, Companies and Locations of Sealy Plants, dated October 26, 1956	1079E	965
Volume IV—Exhibits		
No. 991-H—Names and Locations of Sealy, Incorporated Stockholders, by Plants	1081E	967
No. 996—Selected pages of Sealy, Incorporated Report on Examination, Year ended June 30, 1956 (excerpts)	1084E	970
No. 998—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1955 (excerpts)	1090E	974
No. 999—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1954 (excerpts)	1092E	976
No. 999-A—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1953 (excerpts)	1094E	978
No. 1005—Selected pages of Agenda, Sealy, Board of Directors Meeting, April 5-6-7, 1954 (excerpts)	1097E	980
—1954 Committees, Sealy, Incorporated	1098E	980
No. 1011—Annual Stockholders Meeting, Sealy, Incorporated, November 12, 1954	1099E	983
No. 1012—Manufacturer's Contract, dated September 1, 1936 at Pittsburgh, Pa. by Sealy, Incorporated and The Ohio Mattress Co. of Cleveland, Ohio	1110E	997
No. 1013—Contract Agreement between Sealy and the Ohio Mattress Co., dated December 1, 1937 at Pittsburgh, Pa.	1126E	1011
No. 1014—Contract made between Sealy, Incorporated and Made-Wel Bedding Co. Proprietors—Morris Lewis & Samuel Hertz of 43 Aspen St., Passaic, N. J., at Chicago, Ill., May 1, 1941	1129E	1013

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 1015—Contract made between Sealy, Incorporated and the Fred G. Hodges Bedding Co. of Reading, Pa. at Pittsburgh, Pa. on August 1, 1938	1145E	1027
No. 1016—Contract made between Sealy, Incorporated and U.S. Bedding Co. of Shelby County, Memphis, Tenn., November 1, 1936, at Pittsburgh, Pa.	1164E	1046
No. 1017—Contract made between Sealy, Incorporated and The Colorado Mattress Mfg. Co., of Denver, Colo., at Pittsburgh, Pa. on September 12, 1936	1201E	1092
No. 1018—Contract made between Sealy, Inc. and Sealy Mattress Co. of Northern California, place of business, Oakland, California, at Pittsburgh, Pa. on December 15, 1937	1222E	1113
No. 1020—Telegram from J. R. Lawrence to I. A. Wiener, dated December 2, 1948	1256E	1153
—Letter from I. A. Wiener to J. R. Lawrence, dated November 29, 1948	1257E	1153
—Letter from J. R. Lawrence to I. A. Wiener, dated November 24, 1948	1258E	1154
—Telegram from L. Ballard to J. R. Lawrence, dated December 8, 1948	1259E	1155
—Telegram from Sealy Mattress, Allston, Mass. to J. R. Lawrence, dated December 8, 1948	1260E	1155
—Letter from J. R. Lawrence to I. A. Wiener, dated December 15, 1948	1261E	1156
—An Agreement made between Eagle Mattress Co., and Sealy, Inc., on May 1, 1946	1262E	1157
No. 1031—Amendment to the Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, dated October 1947	1270E	1171
No. 1051—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Saralee (Mrs. Bernard) Kagan, on September 27, 1948	1273E	1174
No. 1061—Contract between Sealy, Incorporated and U.S. Bedding Co., of Memphis, Tenn., a corporation of Georgia, on July 1, 1950	1284E	1192

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 1064—Contract between Sealy, Incorporated and David Mfg. Co., of the State of Missouri, with office at Kansas City, Mo., on October 1, 1952	1295E	1211
No. 1065—Contract between Sealy, Incorporated and Peerless Mattress Co., Inc., a corporation of North Carolina, with offices in Lexington, N.C., on November 1, 1952	1314E	1232
No. 1074—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan and Rebecca R. Lichter, on May 15, 1952	1334E	1254
No. 1085—Contract between Sealy, Incorporated and Schmitt & Henry Mfg. Co., of Des Moines, Iowa, whose tradename is Sealy Mattress Co., on September 28, 1948	1353E	1275
No. 1086—Contract between Sealy, Incorporated and Brown Reliable Bedding Co., a corporation of Michigan, on September 1, 1954	1365E	1296
No. 1107—Interrogatories 7, 8 and 9 and answers thereto	1383E	1315
No. 1113—Interrogatories 58 and 62 and answers thereto	1391E	1322
No. 1168—Telegram sent to Marty Rudick from Gloria S. Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 2, 1956	1402E	1332
No. 1169—Letter from Marty Rudick to Mr. Norman Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 27, 1956	1403E	1333
No. 1170—Letter from Norman Bennett to Marty Rudick, Sealy Mattress Co., Baltimore, Md., dated April 21, 1956	1404E	1334
No. 1171—Letter from Marty Rudick to Norman Bennett, dated August 29, 1956	1405E	1335
No. 1172—Letter from Norman Bennett, President to Marty Rudick, dated September 10, 1956	1406E	1336

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

Equitable Relief Sought

UNITED STATES OF AMERICA, Plaintiff,

v.

SEALY, INC., Defendant.

COMPLAINT—Filed May 31, 1960

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U.S.C. § 4, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by defendant, as hereinafter alleged, of Section 1 of the Sherman Act.

[fol. 2] 2. The defendant named herein maintains offices, transacts business and is found within the Northern District of Illinois.

II

The Defendant

3. Sealy, Inc. (hereinafter referred to as "Sealy") is hereby made a defendant herein. Sealy is a corporation organized and existing under the laws of the State of

Delaware, with its headquarters and principal place of business in Chicago, Illinois. Sealy's stockholders and/or licensees doing business in the United States (hereinafter referred to as "member factories") have been and are independent persons, firms, and corporations engaged in the business of manufacturing mattresses, foundations, combinations and sleepers, as those terms are defined herein.

III

Co-Conspirators

4. During the period of time covered by this complaint, all member factories have participated as co-conspirators with Sealy in the offense hereinafter charged and have performed acts and made statements in furtherance thereof.

3. The acts alleged in this complaint to have been done by Sealy or the co-conspirators were authorized, ordered, or done by the officers, agents, or employees of Sealy or the co-conspirators.

IV

Definitions

6. The term "mattress" as used herein means an item of bedding composed of an outer covering or tick, enclosing [fol. 3] innersprings or a filler of latex, synthetic foam, felt or other materials, or both, designed to be used as a pad for a bed and usually rests upon bedsprings or other foundation or support.

7. The term "foundation" as used herein means an item of bedding, apart from the bedstead, designed to support the mattress and often to provide additional cushioning, commonly but not exclusively composed of an upholstered frame enclosing springs.

8. The term "combination" as used herein means a mattress and a foundation manufactured as a set to match each other and to be sold together.

9. The term "sleeper" as used herein means a sofa bed, studio couch, or Hollywood bed ensemble.

10. The term "Sealy products" is used herein to describe an item of bedding bearing a Sealy label, incorporating

a Sealy patented or exclusive Sealy feature, or styled according to Sealy catalogued items, or which is represented to consumers in any way as being a Sealy item. Sealy products include mattresses, foundations, combinations and sleepers, as hereinabove described.

11. The term "retail store" as used herein means a person, firm, or corporation engaged in the business of selling mattresses, foundations, combinations and sleepers to consumers.

V

Trade and Commerce

12. Sealy presently has approximately 26 member fac- [fol. 4] tories located in various cities and States throughout the United States. These member factories are franchised or licensed by the defendant Sealy, to manufacture and sell mattresses, foundations, combinations and sleepers, under the Sealy trade names and trademarks.

13. During the period of time covered by this complaint, member factories in the United States have manufactured mattresses, foundations, combinations and sleepers, many of which have been Sealy products, and have sold and shipped such mattresses, foundations, combinations and sleepers from the respective States in which they were manufactured to retail stores and other purchasers located in other States, for resale to consumers.

14. During the year 1959, the combined sales of the member factories totaled approximately $48,000,000, a substantial portion of which consisted of sales of Sealy products.

VI

Offense Charged

15. For many years last past and continuing up to and including the date of this complaint, Sealy and the co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in Sealy products in violation of Section 1 of the Sherman Act. Such offense is continuing and will

continue unless the relief hereinafter prayed for is granted. [fol. 5] 16. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among Sealy and the co-conspirators, the substantial terms of which have been that, with respect to Sealy products, they agreed:

(a) That each member factory will sell Sealy products only within the exclusive marketing territory allocated to it, and will refrain from selling Sealy products outside such exclusive marketing territory;
(b) to fix uniform suggested retail prices, and to induce retail stores to adhere to such suggested retail prices, for the purpose of fixing and stabilizing the retail prices of Sealy products.

17. In effectuating and carrying out the aforesaid combination and conspiracy, Sealy and the co-conspirators, have done those things which as hereinbefore charged, they combined, conspired and agreed to do.

VII

Effects of the Conspiracy

18. The effects of the combination and conspiracy alleged in this complaint, upon the hereinbefore described interstate trade and commerce have been:

(a) to eliminate competition among member factories in the sale and distribution of Sealy products;
(b) to deprive jobbers, retailers and other purchasers of Sealy products of the benefits of free and open [fol. 6] competition among member factories;
(c) to eliminate price competition among retail stores in the sale of Sealy products;
(d) to deprive retail customers of the benefits of free and open competition in the sale of Sealy products; and
(e) to unreasonably restrain interstate trade and commerce in Sealy products.

Prayer

WHEREFORE, Plaintiff prays:

1. That the aforesaid combination and conspiracy in restraint of interstate trade and commerce in Sealy products be adjudged and decreed to be unlawful and in violation of Section 1 of the Sherman Act.

2. That the defendant, its successors, officers, directors, managers, agents and representatives, and all persons acting or claiming to act for or on the behalf of defendant, be perpetually enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy, and from entering into, maintaining or participating in any contract, agreement, understanding, plan, program or other arrangement having the purpose or effect of continuing, reviving, maintaining or renewing said combination and conspiracy.

3. That the defendant, its members, officers, directors, managers, agents, employees and representatives and their respective successors, assignees and transferees be perpetually enjoined from entering into, adhering to or maintaining any contract, agreement, arrangement, understanding, plan or program to:

[fol. 7] (a) fix, establish or maintain prices to be charged for mattresses, foundations, combinations and sleepers;

(b) recommend, adopt or circulate suggested prices for the sale of mattresses, foundations, combinations and sleepers;

(c) limit the territory within which any member factory may manufacture or sell mattresses, foundations, combinations and sleepers.

4. That the defendant be directed to adopt and enforce a permanent bylaw requiring:

(a) the expulsion of any member factory who fails to comply with the terms of any final judgment in this case;

(b) that all future applicants for membership in the

defendant, Sealy, Inc., be required to agree to comply with the terms of any such final judgment as a condition of membership.

5. That the defendant, Sealy, and its member factories be enjoined from imposing or seeking to impose upon wholesalers or retailers to whom mattresses, foundations, combinations or sleepers are sold, any restrictions with respect to the persons to whom, prices at which, and the areas in which such products may be re-sold.

6. That the judgment contain such additional terms and provisions as are necessary and appropriate to provide effective assurance that neither defendant organization itself nor the conditions on which it franchises manufacturers or licenses trademarks, trade names, patents or copyrights are used for anti-competitive purposes or with anti-competitive effects.

[fol. 8] 7. That the defendant be directed to furnish to each of its member factories a copy of any final judgment which may be entered by this Court in this matter.

8. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

9. That the plaintiff recover the costs of this action.

Dated: May 31, 1960

/s/ Earl A. Jinkinson. /s/Thomas J. Rooney. /s/Harry H. Faris, Attorneys, Department of Justice, Room 404, United States Courthouse, Chicago 4, Illinois, Harrison 7-4700

/s/ William P. Rogers, Attorney General. /s/ Robert A. Bicks, Acting Assistant Attorney General. /s/ Charles L. Whittinghill. /s/ Paul A. Owens, Attorneys, Department of Justice.

[fol. 9] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

v.

SEALY, INC., Defendant.

ANSWER—Filed August 1, 1960

SEALY, INC., defendant, by its attorneys, for its answer to the complaint herein, states:

1. Admits that the complaint was filed and purports to state a cause of action under the Sherman Act, as alleged in paragraph 1, but denies that defendant has in any manner violated said Act.

2. Admits the allegations of paragraph 2.

3. Admits the allegations of paragraph 3, except that defendant denies the relevancy, accuracy or propriety of the term "member factories" as used by the plaintiff to describe Sealy's licensees.

4. Denies the allegations of paragraphs 4 and 5.

[fol. 10] 5. Admits the allegations of paragraphs 6, 7, 8 and 9.

6. Admits the allegations of paragraph 10, except that defendant denies the relevancy, accuracy or propriety of the description as a "Sealy product" of an item "which is represented to consumers in any way as being a Sealy item." As used hereinafter, the term "Sealy products" is used to describe items of bedding manufactured by Sealy licensees under specifications issued or approved by Sealy and bearing the Sealy name.

7. Admits the allegations of paragraph 11.

8. Denies the allegations of paragraph 12, except that defendant admits that Sealy has issued licenses to manufacture and sell Sealy products to approximately 30 persons, firms or corporations located in 30 cities in various parts of the United States.

9. Denies the allegations of paragraph 13, except that defendant admits upon information and belief that during

the period covered by the complaint, Sealy licensees have manufactured mattresses, foundations, combinations, sleepers and other products, many of which have been Sealy products, and have sold and shipped the same from the states in which they were manufactured to retail stores and other purchasers located in other states, for resale to consumers.

[fol. 11] 10. Denies the allegations of paragraph 14, except that defendant admits upon information and belief that sales by Sealy licensees of mattresses, foundations, combinations, sleepers and other products during 1959 exceeded $48,000,000, and that a substantial portion of the same consisted of sales of Sealy products.

11. Denies the allegations of paragraph 15.

12. Denies the allegations of paragraph 16, except that defendant admits that Sealy licensees are licensed to manufacture and sell Sealy products in specified geographical areas.

13. Denies the allegations of paragraph 17.

14. Denies the allegations of paragraph 18, except that defendant admits upon information and belief that Sealy licensees manufacture and sell Sealy products within the geographical areas specified in their respective licenses.

15. As a further answer to the complaint herein, defendant Sealy avers that:

a. The provisions of the Sealy licenses and Sealy's administration of its advertising, merchandising and quality control programs, attacked by the complaint herein, are reasonably ancillary to the proper protection and exploita-
[fol. 12] tion by Sealy of its trademarks, trade names, patents, processes and manufacturing and merchandising techniques.

b. The licensing arrangements between Sealy and its licensees are reasonable and necessary in order to enable said licensees (who are by United States Census definition "small businessmen") to manufacture, nationally advertise and sell products of uniform quality under the Sealy trade names and trademarks and thereby to provide effective competition in the bedding industry, and in particular with the well-established, nationally-advertised brands of the corporate manufacturers of bedding; such arrangements are neither designed to nor do they have the effect of unreasonably restraining competition.

c. The licensing arrangements between Sealy and its licensees do not restrict the manufacture and sale by Sealy licensees of non-Sealy bedding (so long as such bedding is not passed off as a "Sealy product"), and defendant avers upon information and belief that many of said licensees do in actual practice manufacture such non-Sealy bedding and sell the same both within and without their licensed territories.

d. The licensing arrangements between Sealy and its licensees benefit the public through improved construction, uniformity in quality, reduced costs, and the additional competition which such arrangements enable Sealy licensees to provide in the bedding industry.

[fol. 13] e. The bedding industry of which Sealy and its licensees are a part is characterized in all parts of the United States by a large number of manufacturers and an even larger number of brands and grades of bedding in numerous price ranges, by vigorous competition among manufacturers for the business of retail stores and among retail stores for consumer trade, and arrangements between Sealy and its licensees have not unreasonably restrained such competition.

f. The relief for which plaintiff prays is contrary to the public interest in that it would tend to destroy the ability of Sealy and its licensees to compete in the bedding industry and would tend to augment the already substantial market positions enjoyed by the corporate manufacturers of nationally-advertised brands of bedding.

Defendant further denies that plaintiff is entitled to all or any part of the relief prayed for in the complaint.

WHEREFORE, defendant, Sealy, Inc., prays that the complaint herein shall be dismissed.

Sealy, Inc., a corporation, Defendant. By /s/ John T. Chadwell. /s/ Richard W. McLaren. /s/ Joseph F. Haas. /s/ Richard S. Rhodes, Its Attorneys

Of Counsel: Snyder, Chadwell, Keck, Kayser & Ruggles 135 South La Salle St. Chicago 3, Illinois. Haas, Holland & Zinkow First National Bank Bldg. Atlanta 3, Georgia

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[fol. 14] Receipt of Service (omitted in printing.)

[fol. 15] IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

vs.

SEALY, INC., Defendant.

Transcript of Proceedings—December 5, 1963

had in the trial of the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, commencing on Thursday, December 5, 1963, at 10:00 o'clock, a.m.

APPEARANCES:

Mr. Earl A. Jinkinson, Chief, Midwest Office, Department of Justice, and Mr. Harry H. Faris, Mr. Howard L. Fink, Mrs. Rachel K. Greenbaum, on behalf of the Government;

Messrs. Chadwell, Keck, Kayser, Ruggles & McLaren, by Mr. Richard W. McLaren, Mr. Richard S. Rhodes, Mr. David L. Auderstrasse, on behalf of the Defendant.

[fol. 16] OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

* * * * * * *

[fol. 17] The Court: Where is the Serta case?

Mr. Jinkinson: The Serta case, Your Honor, is before Judge Decker.

The Court: Why didn't you try that one first?

Mr. Jinkinson: That is a good question, Your Honor. We have been waiting for either this Court or Judge Decker to act in these matters. You acted more rapidly, Your Honor.

The defendant, Your Honor, would like to make this a complex matter. There is, however, Your Honor, only one conspiracy consisting of two charges or terms of the con-

spiracy in this case. The first is that the defendant conspired to fix prices, and the second is that the defendant was engaged in a conspiracy to divide territories. Thus, there are two sets of facts, the existence or nonexistence of which are all that need be ascertained.

* * * * * * *

[fol. 18] December 19, 1963

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The Clerk: Case on trial.

COLLOQUY RE DEFENDANT'S MOTION TO DISMISS ON RULE 41(b)

The Court: Good morning, Mr. McLaren.

Mr. McLaren: Good morning, Your Honor.

May it please the Court, we have filed with the Clerk a motion on behalf of the defendant Sealy, Inc., to——

The Court: I have it before me.

Mr. McLaren: —dismiss on Rule 41(b), and at the outset I would like to comment just a little bit on Rule 41(b), and some other cases in this court which I think have a direct bearing.

Rule 41(b) provides in part, your Honor, that after the plaintiff in an action tried by the Court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event that the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The Court is trier of the facts, and may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

[fol. 19] If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Rule 52(a).

The Court. Two and two make four, too.

Mr. McLaren: Yes, sir.

* * * * * * *

[fol. 20] Mr. Jinkinson: Is that what they are working on?

Your Honor, I don't want to appear to be clairvoyant in this matter, and I am not. I don't propose to be an expert on antitrust.

Your Honor, I think at the pretrial and in my opening statements, I told this Court Mr. McLaren, with a motion to dismiss at the end of Government's evidence, will be arguing that what he done was reasonable, that his use of the trademark is legal, everything else—he has done everything except argue the proposition which I believe is paramount on a motion to dismiss; that is to say, has the Government produced a substantial evidence to show by a preponderance of the evidence that it has sustained the charges alleged in the complaint. I am not interested in whether or not what Mr. McLaren's client had done is reasonable. That is not at issue in this case. There are only two issues in this case; one, have the defendants conspired to fix prices; two, have they conspired to allocate [fol. 21] territory. And if they have, is the allocation of territory illegal per se?

* * * * * * *

[fol. 22] Mr. Jinkinson: Simmons has got plenty of competition. Englander is there. There are many small local mattress industries competing. As a matter of fact, every one of these licensees makes a private brand mattress which they sell, and they sell outside of this assigned, designated territory, proving that they can compete if they want to.

* * * * * * *

[fol. 23] December 30, 1963

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RULING ON MOTION

The Clerk: 60 C 844, U.S. v. Sealy, Inc., ruling on defendant's motion for judgment of dismissal made at the close of the plaintiff's case, et cetera.

The Court: That is the only motion pending before me at this time, right?

Mr. McLaren: I believe so, your Honor, yes.

The Court: Well, the motion to dismiss at the end of the Government's case is overruled. However, let me say that should there ever be a decree there will be nothing in it finding that the territorialization, in my opinion, is a violation of the antitrust laws, that phase of the case.

What is the next motion? I am sure he has none. I thought maybe the Government who have been talking about a per se thing for a long time may have a motion.

Mr. Jinkinson: As I understand it, the Court said that there would be nothing in the decree if the Court does hold for the Government eventually, regarding the territorialization.

The Court: That is right.

[fol. 24] Now I am waiting for another motion.

Mr. Jinkinson: Well, I am trying to think whether I am in a position to make that motion.

The Court: All right. There may be something in the decree which says, in my opinion, based on what I heard, that that, the territorialization, is not, based on the evidence, responsible for the ultimate that you complain about.

Mr. Jinkinson: Is that price-fixing?

The Court: That is right.

Mr. Jinkinson: Of course, it is our position that the territorialization itself is illegal per se, your Honor.

The Court: I understand that.

Mr. Jinkinson: And it is a form of elimination of competition just as well as price-fixing is.

The Court: Well, make your motion in regard to that.

Mr. Jinkinson: Could I make a motion tomorrow morning?

The Court: All right.

Will you be here tomorrow morning?

Mr. McLaren: Yes, sir.

[fol. 25] The Court: All right.

Mr. Jinkinson: Ten o'clock?

The Court: Ten o'clock.

(Thereupon an adjournment was taken to 10:00 o'clock, a.m., of the following day, Tuesday, December 31, 1963.)

[fol. 26] IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

vs.

SEALY, INC., Defendant.

Transcript of Proceedings—December 31, 1963

had in the above-entitled cause taken before the Hon. Richard B. Austin, one of the Judges of said Court, in his Courtroom, in the United States Courthouse at Chicago, Illinois, on Tuesday, December 31, 1963, at 10:00 o'clock a.m.

PRESENT:

Mr. Jinkinson, Mr. Faris, Mr. Fink, Mrs. Greenbaum, Representing the Government;

Mr. McLaren, Mr. Rhodes, Mr. Aufderstrasse Representing the Defendant.

[fol. 27] COLLOQUY BETWEEN COURT AND COUNSEL

The Clerk: 60 C 844, United States versus Sealy.

Mr. Jinkinson: You have no further motions, Mr. McLaren?

The Court: Do you want me to set this down for a defense hearing for the defendant's evidence, or what?

Do you have a motion?

Mr. Jinkinson: Your Honor, I don't think at this time that the Government has any motion or any further motion to make.

I want the Court to know, and I think by way of explanation, this decision was not arrived at lightly. It was after the result of considerable deliberations with my staff and a departure from the usual practice of consulting with Washington during the course of litigation which I am trying.

Your Honor, perhaps thinking out loud, and perhaps not being of an aid to the Court, let me say that as I understand the Court's ruling yesterday at Page 2575, it overruled the motion of the defendant at the close of the Government's case.

The Court then went on to say that "should there ever be a decree that there will be nothing in it finding that [fol. 28] the territorialization, in my opinion, is a violation of the anti-trust law, that phase of the case".

The Court: Well, now, as I understand the posture of this case, no one is—you having rested—is going to put on additional evidence in regard to territorialization, and how further hearing in regard to that is going to be helpful to you in regard to that phase of the case puzzles me.

I, prior to arguments, indicated three questions that I requested help on in regard to that phase of the case and both of you replied to those questions. So let's say that you had some inkling as to how I felt in regard to the evidence on territorialization, on the basis of the questions that I requested each Counsel to answer.

Mr. Jinkinson: True.

The Court: The answers have been supplied to me. I have indicated my reaction to the answers and the evidence in regard to territorialization.

As I understand it, the complaint sets forth two phases that you consider a violation of the anti-trust laws; one, the territorialization, and, second, price fixing.

[fol. 29] Mr. Jinkinson: Right.

The Court: If this were a two-count complaint, which it isn't, as I understand it, and territorialization was in one count and price fixing was in another count, at the end of the plaintiff's case I would have little difficulty in indicating my feelings on the matter by being able, perhaps, to strike one count and let the other count stand. That not being the posture of this case, I don't know what I can do other than what I have done.

Mr. Jinkinson: Your Honor, our position is just a little bit different than the Court's position. I will try to make myself clear.

The Court: I will be happy to have some help, and I would like to have you keep me out here all morning. It is still fifty in my chambers and I don't want to go back.

Mr. Jinkinson: I am not going to keep you all morning, but our position is this: Paragraph 15 of the complaint charges the offense, that is to say, one offense, a violation of Section 1 of the Sherman Act. It was committed, according to Paragraph 16 of the complaint, through two means, one, as price fixing, and the other was territorialization.

[fol. 30] Now, there are two components of the conspiracy charged in Paragraph 15. Now, that is the charge and then we go to the prayer for relief.

Now, in the prayer for relief the Government asks "That the aforesaid combination and conspiracy in restraint of interstate trade and commerce of Sealy products be adjudged and decreed to be unlawful in violation of Section 1 of the Sherman Act."

Now, I assume that the Court can say that you have violated the Sherman Act, defendant Sealy, by price fixing. That is sufficient. Anyone of the two could——

The Court: I assume that, too.

Mr. Jinkinson: That is right.

Now, the Court could make a ruling that, "I do not believe the Government's evidence with regard to territorialization, and I am holding that it does not constitute a violation of Section 1 of the Sherman Act."

Now, I go on and I ask for other relief in the prayer of the complaint, and I consider those matters asked for in the prayer of the complaint to be the issues which this [fol. 31] Court must decide, that is to say, this is the claim for relief that I am making.

I think Rule 56, I believe it is, (b), says that every litigant is entitled to an adjudication of the claims he makes.

Now, I am entitled to an adjudication. If the Court feels that our evidence does not sustain the claim I make for a prohibition against territorialization, the Court may so hold.

For example, in Paragraph 3 I say——

The Court: I think that if the time ever arrives and you ever give me a chance to do it, that is what I am going to do.

Mr. Jinkinson: Well, now, that is what I want to address myself to for just a few minutes.

The Court: All right.

Mr. Jinkinson: Assume I make a motion for a summary judgment in this case as to both phases of the case, that is to say, price fixing and territorialization. Now, if we look at the answer filed by defendants in this case, they have denied both price fixing and territorialization.

The Court: Aren't we beyond the stage of a summary judgment after having gone through a hearing on the merits for ten days, or whatever it was? It seemed like [fol. 32] ten years.

Mr. Jinkinson: I can't perceive any other motion the Government can file other than a motion for summary judgment.

The Court: I understood that you were going to insist at the end of the Government's case that you had made a proof of per se violation and were going to object to the defendant presenting any evidence.

Mr. Jinkinson: I am going to object, that is right. When he offers it, I am going to make my objection to it.

The Court: Maybe that is the stage at which we have arrived at this time.

Mr. Jinkinson: That is right, Your Honor.

I am afraid if I make a motion of any kind——

The Court: You don't have to make a motion.

I will let Mr. McLaren come up here and try and get a date set down to present evidence and maybe that will resolve it all.

Mr. Jinkinson: Very well, Your Honor.

Mr. McLaren: If Your Honor please——

The Court: Is it your position, Mr. Jinkinson, that you have made a per se presentation of price fixing?

[fol. 33] Mr. Jinkinson: It is my position, Your Honor——

The Court: And also territorialization?

Mr. Jinkinson: And also territorialization, that is right, Your Honor.

The Court: I understand that you haven't abandoned it voluntarily.

Mr. Jinkinson: That is right. I should say not.

Now, Your Honor, you see, in the White case, the Government got in this position: It did make a motion for summary judgment and the Court granted it both as to price fixing and territorialization.

Now, the defendants went to the Supreme Court and

said, "Look, I haven't had an opportunity to put on my defense."

Now, the reason they didn't say that with reference to price fixing also, I assume, was because they agreed with the Government that the evidence did show price fixing and they abandoned that on appeal.

But if this Court should rule now——

The Court: Rule now on what? I think I have ruled on everything that is before me.

[fol. 35] Mr. Jinkinson: Well, Your Honor, I say there is no——

The Court: I am waiting for somebody to move that I do something.

Mr. Jinkinson: I say there is no defense to a price fixing case other than that they did not do it.

Now, Mr. McLaren, I assume, has a right to say that.

Mr. McLaren: If Your Honor please, it seems to me, pursuant to our discussions at pre-trial, that Your Honor having ruled on the territorialization question, that this lawsuit ought to be over, and I think that perhaps, if I might——

The Court: I assume that it would be over if you rested.

Mr. McLaren: Subject to a form of order on prices, I assume, Your Honor.

If we simply rested, I judge from what Your Honor said, that you have determined that they have made out no claim for relief on territorialization, and if I might suggest a course of action, perhaps this would avoid further trial time: I think that Your Honor could properly, under Rule [fol. 35] 54(b), if we renewed our motion for dismissal at the close of the Government's case, limited to the issue, to the claim on territorialization, I think Your Honor could properly enter judgment of dismissal of that issue and I would——

The Court: I clearly could if it were set out as a count, Mr. McLaren. I am confused because this is just one complaint. I mean that if somebody had set this up in two counts, price fixing in one and territorialization in another, my problem would be simple. Only half of your motion would have been overruled yesterday.

This is a matter of getting me out of the legal woods.

Certainly there can be no question as to what is in my mind as to what I think the proof shows in this case in regard to each aspect of the case.

Now, if somebody can suggest how, properly, I can proceed from this point on, I will be very happy to receive that suggestion.

I suppose a proposed consent decree covering price fixing or a proposed contested decree covering price fixing might bring it to a head.

[fol. 36] Mr. McLaren: Well, I think it could, Your Honor, if we had disposed of the territorialization issue, so that if the Government wants to, as I gather what they are thinking about, they could then appeal from it.

The Court: I would be very happy to have you bring me some proposed findings of facts in regard to the territorialization.

Mr. McLaren: Well, this is what I wanted to suggest, Your Honor, that you grant us leave to refile our motion under Rule 41(b) directed to the claim, and I think that this is supported by Rule 54(b) just as much as if it were in separate counts. It is not as clear a case, but I think that Mr. Jinkinson agrees, that it is a separate issue and a separate claim.

The Court: I want to clearly have before the Court of Appeals my thinking on this matter.

I want you, if you desire, to go up and appeal the price fixing aspect. I want Mr. Jinkinson to have an opportunity and a good record for him to go up and present his theory in regard to territorialization. I wish each of you to have that right, and what I am seeking is to have each of you suggest to me the manner in which you think those aspects [fol. 37] which tend to favor and those aspects which tend to disfavor you can be most clearly presented to the Court of Appeals. That is what I want to do.

Mr. McLaren: Well, my suggestion would be, Your Honor, that we do submit proposed findings and conclusions on the territorialization claim, that judgment be entered dismissing that, that as to the pricing claim which is separate and distinct, that we each submit a proposed form of order to Your Honor, supported with such——

The Court: I assume that Mr. Jinkinson would permit

you, as he did in the Spring Air case, would permit you to continue to advertise in national magazines.

Mr. McLaren: Well, I would want to show, so that our record would be complete on that aspect, that it is customary in the industry, Your Honor, to have suggested retail prices in the national advertising. It is an industry practice. It is something that we do badly need. What we don't need——I told Your Honor at pre-trial that we would never have litigated this case if it is a question of policing resale prices. We say that we don't do it. We don't claim a right to do it. We wouldn't litigate this case. We would [fol. 38] take an order that says that we can't police resale prices.

We do have to have the right to have suggested resale prices for advertising. And in the Spring Air decree, I felt, Your Honor, that they bought their peace rather dearly there in that as Your Honor held here wholesale prices are not within the scope of the complaint, and yet the consent order there, as I read it, does prohibit them——

The Court: The only aspect of the Spring Air decree that I am aware of is this permission to continue national advertising of suggested retail prices. I am not aware of the other aspects of that decree, and I think that they are not relevant to this case. I don't want to know about them.

I think that everyone now knows my attitude in regard to the two aspects of the case.

As I say, if it were set up in counts, why, this would be just a clean-cut decision one way or the other in regard to that; because they are interwoven in a one-count complaint, why, if you will break it down in some fashion so that each of you feel satisfied that if you desire to appeal, that your record is good, and for that purpose I will continue this for whatever time you suggest that this can be [fol. 40] worked out in that fashion.

Let me say that I feel in regard to price fixing that there was a conspiracy, based on the evidence up to this point, a conspiracy between the stockholder corporations of Sealy and Sealy, Inc., in regard to local price fixing attempts, and I have indicated that, in my opinion, sales and local advertising are so closely related that they have a direct bearing on each other and nobody is going to go in on an

ad of Goldblatt's that they are selling posturepedics at seventy-nine fifty and say, "I saw your ad for seventy-nine fifty and I would like to buy one for fifty-nine fifty"; so that what I am concerned with is the policing of the local advertising as well as local resale prices. I used to call those prices retail, but you fellows, after ten days, have gotten me using the phrase of the industry, resale.

Mr. McLaren: Well, I think—I can't speak for Mr. Jinkinson—but I believe that his thinking and mine are alike, that we in effect have two separate claims, and it is in the same legal posture as if they were two separate counts, that we could have a judgment on the——

The Court: If you fellows can convince each other that [fol. 40] what you are going to do puts each of you in a proper position to appeal my order, I will be very happy to ride with you.

Mr. Jinkinson: I think the first thing the defendant would have to do would be to rest his case.

There couldn't be any findings of facts or conclusions of law or adjudication by the Court unless the defendant has rested and——

Mr. McLaren: Well, I don't think we are in a position to do that as far as the price allegations are concerned, because there is still the question of the form of the order and so on, and we think that there are certain things that we should present on that score.

Now, perhaps any further evidence on that score could be provided by order of the Court, and we have made the representation at pre-trial that we would not fight a lawsuit strictly on that ground.

I believe in one or two other cases the Court has limited further proceedings to the question of a scope of relief.

The Court: Well, I suppose one way to bring this thing [fol. 41] to a head would be for you to make an offer of proof in regard to price fixing, and I would rule on your offer of proof.

Mr. McLaren: I think that if the Court would receive from each side the proposed form of order, and whatever offer of proof there is and so on regarding the scope of relief on the price situation, that that ought to dispose of the case, along with a judgment of dismissal on the territorialization question.

The Court: Well, I don't know how I can make my position any clearer that I have endeavored to.

Mr. McLaren: I certainly think that you have, Your Honor.

The Court: You fellows have been in this business a lot longer than I have and I am suggesting to you that you prepare the disposition of this case in such a fashion that each of you can get the most comfort possible. I want each of you to feel that you haven't been foreclosed in making your record so that you may do, after the matter is disposed of, and I hope some day that it will be, whatever future steps that you care to take.

Now, I suppose both of you are tied up in cases around [fol. 42] the country and all that sort of thing, but I would like to have you get to work on this and delight me some day by coming in and saying, "Well, we have arrived at this suggested, agreed disposition of the case". Whether that time will ever come or not, I don't know.

I am suggesting that you put this record in the shape that each of you feel you want it to be in so that you may benefit from it to the extent that you hope to.

Now, does anybody care to suggest when that time might be, knowing whatever date that you suggest you probably won't be ready at that time.

Mr. McLaren: Well, we would like, Your Honor, very much, to present the findings of facts and conclusions of law, and I think that maybe thirty days would be adequate for that.

The Court: Meanwhile, are you going to talk to your alter ego about the provisions of a suggested decree in regard to the price fixing aspect.

Mr. McLaren: I will be glad to do that, Your Honor, but I realize the difficulties that they are laboring under, [fol. 43] having obtained an order in Spring Air and the Restonic cases of a certain variety where they didn't go to trial at all, and we don't feel that we can accept or agree on that order, and I don't suppose that he wants to depart——

The Court: Well, I assume that if the prayer for relief in this case didn't involve wholesale prices, I don't know how that could become relevant in an order in this case.

Mr. McLaren: I think that is absolutely right.

The Court: I tried to ascertain at the outset whether that was in any way involved and was assured by both sides that it was not.

Mr. McLaren: Well, we will certainly get together with the Government and try and work it out, and if we can't, Your Honor, why, I would suggest that we make our offer of proof.

The Court: I will put this on my February past case calendar for a report. At least I know that I haven't lost track of it, and I urge each of you to try and come in here long prior to that with some suggested disposition of the matter.

Mr. McLaren: All right, Your Honor.

[fol. 44] Mr. Jinkinson: Thank you, Your Honor.

The Court: All right.

(Which were all of the proceedings had in the above-entitled cause on the day and date as aforesaid.)

(Case adjourned to the February Past Case Calendar.)

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[fol. 45] February 14, 1964

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Earl H. Bergmann, a witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaren:

* * * * * * *

[fol. 46] Q. In the course of your employment in the bedding business, Mr. Bergmann, would you say you have become familiar with the industry and its problems?

[fol. 47] A. Well, I have been in the business for forty years, and I think I have a good general knowledge of it.

Q. Are you familiar with the National Association of Bedding Manufacturers?

A. Yes. I was not permitted to be an officer there, because the Bedding Association does not permit anyone except the manufacturers to be officers or directors, but I was active in attending committees and worked on some committees, and I knew the officers of the Association very well and even recommended to them certain people who I thought would be capable of being directors.

Q. Do you happen to know how many manufacturer members there are in the NABM?

Mr. Jinkinson: Your Honor, I object to this line of interrogation for the reason that it is irrelevant and immaterial to any issues involved in this lawsuit. The National Association of Bedding Manufacturers is not a defendant in this case. We haven't made any charges against them. This is totally irrelevant to the issues involved in this case.

[fol. 48] I would like to have a standing objection to all interrogation along this line so it is not necessary to repeat it.

The Court: The purpose of this is what, Mr. McLaren? To show the Court the background?

Mr. McLaren: The nature of the industry and the population.

The Court: The objection is overruled. There is a standing objection to all of this. I will stop it myself if it becomes any more irrelevant.

Go ahead.

By the Witness:

A. Their enrollment was between four and five hundred members.

By Mr. McLaren:

Q. Manufacturers? And they were manufacturers?

A. All manufacturers.

Q. Yes. Now, did there come a time, Mr. Bergmann, after you started in the bedding business, when a substantial change took place in the manufacturing market of mattresses?

[fol. 49] A. Yes. That occurred in 1926. Prior to that occurrence, the mattress business was not a very substantial business, consisting of substantial manufacturers. There were rather small manufacturers.

In 1926, Simmons came out with the Beautyrest mattress, which was nothing more or less than the picking up of a unit that had expired, from the patent point of view, developing it into a new mattress which they announced for the first time and revolutionized the industry, because they not only started to advertise it nationally, but they also pre-ticketed it at $39.50 and established, for the first time in the industry, an indication of quality at a given price.

[fol. 50] By Mr. McLaren:

Q. Mr. Bergmann, is this the type of material which you referred to during your testimony that was developed by the Sealy staff?

A. Yes, sir.

Q. In support of these various promotions, is that correct?

A. Yes, sir.

Mr. McLaren: I am sorry, your Honor, I should correct the record here; apparently 21-B is a 1960 set of promotional material. It refers to "On sale now at a 1956 price."

The Court: All right. That sort of indicates itself, too. You are just correcting the record, though?

Mr. McLaren: Yes, Your Honor.

By Mr. McLaren:

Q. Mr. Bergmann, to what extent is the national and local advertising important in promotions such as you describe?

A. It is very important and probably constitutes better than 50 per cent of the volume of the company.

[fol. 51] Q. Now, just going back to the subject of promotions for a moment, I believe you testified that competitors had such promotions.

I wanted to ask you the question, What about mail order firms, large retailers, and so on, who have their own private brands? Do they have promotions?

Mr. Jinkinson: I object to the form of the question, being leading and suggestive. I suggest it is irrelevant, immaterial, and not probative of any of the issues involved in this case. And may my objection stand.

The Court: The objection is overruled, and it may stand.

By the Witness:

A. Yes, they did have.

By Mr. McLaren:

Q. Can you give us some examples?

A. Well, Sears Roebuck and Montgomery Ward follow very closely along the national pattern. Then you had mail order houses, like Spiegel, and other people who likewise did the same thing. It was an industry practice.

Q. To what extent would you say it is competitively im-
[fol. 52] portant for Sealy and its licensees to be able to engage in national advertising and run such promotions?

Mr. Jinkinson: Objected to as calling for an opinion and conclusion of the witness.

The Court: Overruled.

By the Witness:

A. I would say it was vitally important.

By Mr. McLaren:

Q. Why do you say that? You say vitally important?

A. I say that for the simple reason that, without it, you would not be able to hold your place in the market with competitors who are in a position to do that against you. You have no choice.

Q. Do you have any basis for a comparison of the experience of the mattress manufacturer who does and who does not have the advantages of national advertising promotions?

A. Well, there are many mattress plants who would fall in the category of not having advantages and, therefore, [fol. 53] they have made no progress in our own particular group.

I can point out cases of where we have brought in a licensee for a certain section of the country who probably was doing, maybe, $200 or $300 thousand volume, and after a matter of five years or ten years, he was up to a million or more.

We have a situation right here in the City of Chicago where I believe the plant, when it came in in 1937 or 1938, was doing around $200,000. Today it is doing $6 million.

Q. Is there any other example, in New York, New York State?

A. Well, an outstanding example would be Schenectady, which was a small plant when we came in, and this man was having such a hard time trying to make a living that he was selling maple bedroom furniture on the side. And today he is doing over two and a half million in bedding only.

Q. What about the Chester, Pennsylvania, licensee? Didn't you bring him in?

A. Yes. When I brought him in, he was not doing any [fol. 54] mattress business at all. He was primarily in the upholstery field, and the mattress business, under the brand of Sealy, became so important and large to him that he gave up the furniture end. And today he is doing about three times in bedding what he used to do in furniture.

Q. And do you attribute this success of these people to the advertising and the services that they are getting from Sealy——

Mr. Jinkinson: I object to the form of that question, leading and suggesting an answer.

The Court: The objection is sustained.

By Mr. McLaren:

Q. At the time you resigned as president of Sealy, do you recall approximately how much Sealy was spending a year on advertising?

A. Approximately $1 million.

* * * * * * *

[fol. 55] Q. Thank you.

And I believe that I indicated in reading from this exhibit that certain matters were referred to the agency. Would that be the advertising agency?

A. The advertising agency.

Q. Hired by whom?

A. By Sealy, Inc.

Q. And to what extent was there a working relationship between the staff and the advertising agency?

A. Well, the advertising agency served almost as a member of the staff. There was a close coordination and liaison between them.

Q. Based upon your experience as president during this period of 1950 to 1960, Mr. Bergmann, for how many Sealy licensees was it feasible to spend $30,000, say, for a Life magazine ad?

A. Financially——

Mr. Jinkinson: Your Honor, I object to that as being irrelevant and immaterial. I don't see any relevancy to this at all.

The Court: Maybe he is endeavoring to show the necessity [fol. 56] for national advertising by Sealy, Inc., I think, and for that purpose it may go in.

By the Witness:

A. Financially, possibly two or three might have had the money to do it, but from a practical point of business it wouldn't be feasible to do it.

Q. Why not?

A. Because to spend nearly $30,000 in an isolated magazine, a national magazine, and not have the benefit of a complete advertising, merchandising program backed up by all of the paraphernalia of window displays and stuffers and the many things that you must have, you cannot possibly make it financially successful and, therefore, I would say none would do it and they couldn't do it without Sealy, Inc.'s help.

The Court: I assume a manufacturer in Connecticut didn't have any of his mattresses to sell in California, is that right?

The Witness: No, he wouldn't be shipping to California.
The Court: That is what I mean.

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[fol. 57] March 13, 1964

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Mr. McLaren: Your Honor, I am reading from the deposition of DuVerne G. Hutchinson, called by the defendant for examination under the civil rules, in a deposition on February 1, 1962.

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[fol. 58] I'm turning now to the bottom of page 15, your Honor:

"Q. Simmons places advertisements, for example, in magazines?

"A. That is correct.

"Q. And I believe I have seen ads by Simmons in magazines such as Life, Saturday Evening Post?

"A. Yes. Better Homes and Gardens, House and Gardens, New Yorker.

"Q. Holiday?

"A. I do not recall any advertising in Holiday. Ladies Home Journal, American Medical Association.

"Q. Modern Brides?

"A. Yes, yes. I did not get the Brides yet.

"Q. Are there other bride books, too?

"A. Yes."

Skipping the next two lines.

"Q. Well, other trade books besides the AMA Journal [fol. 59] —motel type things, maybe hotel books?

"A. Yes. I am not familiar with them, because I am not in the contract end of the business. But I am sure they are in some of those.

"Q. What about radio? Does Simmons use radio?

"A. We have used radio.

"Q. TV?

"A. We have used TV.

"Q. Newspapers?

"A. Yes, we have.

• • • • • • •

[fol. 60] "Q. Do you as a salesman regard these national promotions as helpful in generating volume and so on?

"A. Yes.

"Q. Mr. Hutchinson, do you also furnish mats for advertising by the stores other than in connection with these national promotions?

"Mr. Long: We make that same objection which we did before."

Mr. Fink: And we make the same objection.

The Court: Same ruling.

Mr. McLaren: (Reading)

"A. We generally provide some type of mat on everything we make to assist dealers in preparing newspaper advertising."

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[fol. 61] "Q. And what you are doing is representing the value of the product to the consumer, and hoping that the retailer follows the suggested retail price; isn't that right?

"A. No, we do a little more than hope in fair trade states.

[fol. 62] "Q. Yes, I understand that.

"Let me ask you a few questions about competition, taking the midwest—the Chicago area as an example."

I neglected to mention, I believe, your Honor, that we had gone into this question of competition in the Chicago area, and the point here is that we are showing, to the extent that Sealy mattresses may be fair traded wherever they may be fair traded, or the extent that they have suggested retail prices. The standard, I believe, is whether or not there is free and open competition. In fair trade states, you are permitted to fair trade a product if it is in free and open competition with other items.

"Would you have in mind at all how many competing mattress manufacturers are out selling in the Chicago area?

"A. Well, there is quite a few. There are, of course, more manufacturers in Chicago—selling in the Chicago area than there are located in the Chicago area.

[fol. 63] "Q. Yes.

"A. I imagine there is 15 or 20.

"Q. Fifteen or twenty that are—well, let me hand you the Chicago classified directory. Will you look through there and mark any competing mattress manufacturers in this area and then give me another figure.

"A. Appreciate this, I do not accept nor do I define a mattress manufacturer as a mattress manufacture merely because he calls himself that in the Red Book.

"Q. Yes, but you would know——

"A. And in answering your question, I was not using that interpretation. The fact that he is listed in the Red Book does not make him a mattress manufacturer, in my opinion, as such.

• • • • • • •

[fol. 64] The Court: All I am interested in is whether we can't save some time by the government indicating that they don't contend that Sealy has the mattress market in America by the throat and that they have no competition among other manufacturers because Simmons does make mattresses and Englander does make mattresses and Burton-Dixon does make mattresses.

Mr. Fink: Whether they do or not, we are not saying, but we will say this, it is not an issue. We have not put that in issue in this case and we don't feel that it has any relevancy at all. We haven't contended it and——

[fol. 65] The Court: I don't know why that statement wouldn't stop them from urging that in the Supreme Court, Mr. McLaren.

Mr. McLaren: Well, I didn't get to mention, your Honor, the other leg of their contention and theory as I understand it; that is that—and it is alleged in the complaint—that Sealy goes on and polices retail prices and requires their being maintained and that they are maintained and——

The Court: Yes, but I don't kow—I mean, they do contend that and there has been some evidence that indicates that they weren't whistling in the dark when they made that contention, but that still has nothing to do with your endeavor to prove that other people make mattresses in America besides Sealy.

Mr. McLaren: If the government would concede that Sealy products are in free and open competition with other products of other manufacturers, then this line of evidence is unnecessary, but we cannot take the chance, I am afraid. [fol. 66] The Court: Now, we are getting down to sort of semantics which can hide feelings. Maybe if you could better define what you mean by "free and open competition" we could agree on some words or some meaning as to what those words mean, as far as you are concerned. Maybe we could get some place. What do you consider——

Mr. McLaren: I am using it in the same sense that it is used in the fair trade statute, your Honor, that a brand manufacturer or distributor, under the different state laws, is entitled to fair trade wherever his products are in free and open competition with other products. In other words, that there is substantial competition among different brands; retailers and buying brands and consumers and buying brands have an adequate number of choices. And what I am concerned about, your Honor, is that they will argue the inferences of the facts shown in the record, that there is agreement at the Sealy level and there is dis- [fol. 67] crimination of suggested retail prices and that Sealy in its advertising regulations has, so to speak, policed the advertising.

We concede there is a difference between policing advertising and actual selling prices.

The Court: I understand that that is your position.

Mr. McLaren: Yes.

The Court: I understand that, but I still don't see quite the materiality and relevancy of evidence in this lawsuit that Sealy has competitors in the mattress business. I think there has been no contention, and I don't think anybody could successfully prove that Sealy isn't in competition with Simmons and Englander and Serta and Spring Air, and I don't know how many you have to be in competition with to make it free and open, but I would think

that the number that I have named makes it free and open.

Mr. McLaren: Well, I think that is true, your Honor, and the thrust of the proof is that with all of these substantial competitors in the business it is impossible that we do actually maintain or police the real resale prices.

[fol. 68] The Court: That is going to be your argument.

Mr. McLaren: Yes, sir. And that is what I am going to base it on—the evidence.

The Court: I know. I hope—well, I assume that you are going to try to introduce some evidence in support of your position. But I don't think that evidence that other people, many other people, manufacture mattresses with which Sealy competes is something that is necessary proof in this lawsuit. It is conceded that other people make mattresses, that you do compete with Simmons, you do compete with Englander, you do compete with Spring-Air, you do compete with Burton-Dixie.

I doubt if the Government, at this time or at any time, by inference or through the back door, or any other way, can contend that you don't have many business competitors in the mattress industry.

Mr. McLaren: I think that is exactly right. Well, your Honor, suppose——

The Court: You concede that they have competitors in [fol. 69] the mattress business?

Mr. Fink: Yes, we concede that, your Honor.

The Court: Many competitors?

Mr. Fink: Yes, many competitors. But we do not concede anything in this language of free and open competition.

The Court: I haven't asked you to concede that. I just asked if you concede that they have many competitors in the mattress business.

Mr. Fink: That's correct.

* * * * * * *

[fol. 70] Mr. McLaren: Well, the witness in answer to the question about Cleveland, whether there is a large number of manufacturers in strong competition, said:

"A. Yes, there is probably not as many as Chicago.

"Q. Now, some of these various companies that you

[fol. 71] have listed in going over the Red Book there, there are a number of them that advertise their mattresses, are there?

"A. Quite a few of them. I hesitate to say all of them. Quite a few of them.

"That do their own advertising rather than through a dealer?

"Q. Yes.

"A. Yes. There is several of them.

. . . . . .

"Q. Now, do you recall, Mr. Hutchinson, at what date the company commenced advertising trademark mattresses in media that were circulated nationally?

"Mr. Faris: Same objection."

The Court: Overruled.

Mr. McLaren: (Reading)

"A. I think that goes back as far as I do.

"Q. Well, let me ask it another way: When you first came to the company, you have some recollection of the company advertising in nationally-circulated media of trademark items?

"A. I believe they were advertising at that time.

"Q. Do you have any recollection of which of the particular trademark mattresses were most heavily advertised at that time?

"A. Yes. The Beauty Rest.

"Q. And throughout the years, can you state whether or not the Beauty Rest has been the most heavily ad-

[fol. 73] vertised of the Simmons mattresses?

"A. Yes. It has been."

Skipping over to the bottom of Page 57:

"Q. What trademarks in the Simmons line are rather regularly advertised currently, day in and day out, aside from national promotions and sales of another sort?

"Mr. Faris: Same objection."

The Court: Overruled.

Mr. McLaren: (Reading)

"A. You mean regularly advertised by dealers?

"Q. By the Simmons Company, either alone or in co-operative advertising schemes with dealers.

"A. Aside from national promotions?

"Q. Yes.

"A. Well, they would be Beauty Rest and Deep Sleep and Slumber King and Back Care, and the Beauty Rest Luxury—Beauty Rest Elegance, rather.

"Q. Well, all right. Let us take them one at a time.

[fol. 74] "Would you have any idea say for the current year how many times an advertisement for Beauty Rest might have appeared in Life Magazine?

"Mr. Faris: Same objection."

The Court: Overruled.

Mr. McLaren: (Reading)

"By the witness:

"A. I would say four or five times.

"Q. How about the Ladies Home Journal?

"A. Maybe three or four times.

"Q. Saturday Evening Post?

"A. Four or five times.

"Q. McCall's?

"A. Once or twice.

"Q. All right.

"Would you have any idea during the current year how many times an advertisement for, say, Deep Sleep has appeared in Life?

"Mr. Faris: Same objection."

The Court: What is the purpose, by the way, of this at this time?

[fol. 75] Mr. McLaren: I believe, your Honor, that we wind up here on the proposition that these are the ads that they were using, and that they contained the suggested retail prices, and the promotions——

The Court: Is there any contention that they didn't?

Mr. McLaren: No. But this was giving the order of magnitude of the advertising.

The Court: What value or what comfort do you expect to get out of that?

Mr. McLaren: Not a great deal, your Honor. It just completes the picture of this thing, and there is only about another half a page of it.

The Court: All right. Go ahead. Get whatever pleasure you can out of that.

Mr. McLaren: The question was how many times advertisements for the Deep Sleep had appeared in Life.

"A. I don't know whether there was an advertisement in Life or not.

"Q. Do you know whether it was advertised in the Saturday Evening Post?

[fol. 76] "A. No. I think the ads we had were in Look last year."

Then Page 60 at the bottom:

"Q. And would it be fair to say that the pattern of magazine advertising established last year as to the brands advertised—strike 'brands' and substitute 'trademarks'—and the approximate number of times they appeared in a given magazine would have been fairly representative of the Simmons advertising over the past few years?

"A. I would think so."

* * * * * * *

[fol. 77] Mr. McLaren:

* * * * * * *

I would like, now, to go to the deposition of Mr. Raphael J. Musicus, an executive of the Englander Company.

* * * * * * *

[fol. 78] Mr. McLaren: Skipping over to Page 12, toward the lower half of the page:

"Can you tell us, Mr. Musicus, the media in which Englander's bedding is advertised?

"Mr. Long: Same objection."

The Court: Overruled.
Mr. McLaren: (Reading)

"By the Witness:

"A. Television, magazines, newspapers.
"Q. Radio?
"A. Is this—the tense of that question, is that present tense or past tense?
"Q. Let us take the present tense.
"A. That is it.
"Q. Has Englander in the past advertised over the radio?

"Mr. Long: Same objection."
The Court: Overruled.
Mr. McLaren: (Reading)

"Q. Within your experience, of course.
"A. Yes.
[fol. 79] "Q. Does Englander advertise in magazines with national circulation?

"Mr. Long: Same objection."
The Court: Overruled.
Mr. McLaren: (Reading)

"Yes.
"Q. Could you name some of those magazines?

"Mr. Long: Same objection."
The Court: Overruled.
Mr. McLaren: (Reading)

"A. It is advertised in Life Magazine, Saturday Evening Post, Good Housekeeping, and numerous others.
"Q. Brides, Magazines, for example, Homemakers' magazines?

"Mr. Long: Same objection."
The Court: Overruled.
Mr. McLaren: (Reading)

"A. Of that category, yes.
"Q. Does Englander also engage in cooperative advertising with retailers for local newspaper advertising?
"Mr. Long: Same objection."

[fol. 80] The Court: Overruled.

Mr. McLaren: (Reading)

"A. Yes."

And then Mr. Rhodes had marked Musicus Exhibit No. 2, and that is Defendant's Exhibit 46, and it was identified —Mr. Musicus indicated that he was familiar with it as an advertisement of Englander appearing in Better Homes and Gardens, September 1961 issue.

I will offer DX-46, your Honor.

The Court: The objection is overruled, and it may be received subject to motion to strike.

(The said document so offered and received in evidence, was marked Defendant's Exhibit 46.)

Mr. McLaren: Then going over to the bottom of Page 15, your Honor:

"Q. Would there generally be a price included in the Englander advertisement?

"A. Well, we will generally point up a mattress for purposes of illustration with a price. But that generally [fol. 81] is not of any consequence in our type of advertising.

"Q. But it generally will be included?

"A. There will be some reference to some item in the line."

Mr. Long entered his objection there. I guess he got it in after the answer.

[fol. 82] Mr. Rhodes: The next deposition, your Honor, is of Marvin Graff, which was taken in Indianapolis, Indiana by the Defendant on October 29, 1962.

* * * * * * *

[fol. 83] "Q. Let me ask you about the bedding industry and first directing your attention to the bedding manufacturers, are there a number of bedding manufacturers offering their lines in the trade area?

"A. Oh yes, I would say every major line in the Midwest have offered their products to us at one time or another.

"Q. Can you name the principal manufacturers that are acting in this area?"

Mr. Fink: Objection, your Honor.

[fol. 84] The Court: The reason for the objection?

Mr. Fink: The reason for the objection is the same as we offered before on the bedding manufacturers; that it is immaterial that there are a large number of bedding manufacturers that were—in this case, a number of bedding manufacturers offering their bedding in the trade area. It is immaterial to the issues of this case.

The Court: Well, on the question of price, I agree with you. There seems to be some concern that you will raise a point at some time that if they don't prove it now, you will indicate that there is a monopoly as far as Sealy is concerned, because there aren't any other bedding manufacturers.

Proceed, Counsel.

Mr. Rhodes: Thank you, sir.

The witness proceeded, your Honor, to name a number of bedding manufacturers. I think we can skip over the naming of them.

The Court: All right. I think we heard the names enough.

[fol. 85] Mr. Rhodes: Question, at the top of page 7:

"Now, what about the retailing end of it. What types of stores in your trade area handle bedding?

"A. What types of stores?

"Q. Yes.

"A. I would say almost all types of furniture stores, new and used offer bedding for sale, besides some individual sleep shops that have recently opened up.

"Q. And also department stores?

"A. Oh, yes, department stores are a major factor in bedding.

"Q. Do you have an idea of the number of retail stores in your trade area that handle bedding?

"A. I would say two hundred fifty or more.

"Q. And that would be in this whole area of fifty to one hundred mile radius around Indianapolis?

[fol. 86] "A. Probably more than that but I am bringing it down to a minumum."

* * * * * * *

[fol. 87] Mr. Rhodes: The next deposition, your Honor, is that of Irvin Pelts, taken by the defendants in Memphis, Tennessee, on October 30, 1962.

* * * * * * *

[fol. 88] Mr. Rhodes: (Reading)

"Q. The question is, what types of stores handle bedding?

"A. Well, the furniture stores and department stores.

"A. In your particular area here in Memphis around your store for a mile or so, which are the principal ones? Just give us an idea."

Then, your Honor, the witness named stores, and then:

"Q. Could you estimate how many stores there are [fol. 89] in your trade area that are handling bedding?

"A. You mean in the Memphis area?

"Q. In your trade area.

"A. It would run into several hundred stores."

Skipping over to Page 6:

"Q. What would you say with respect to the degree of competition which exists among retailers in the selling of bedding.

"Mr. Jinkinson: That is objected to for all the reasons heretofore urged. Further, it calls for an opinion and conclusion of the witness, no proper foundation having been laid."

The Court: Overruled.
Mr. Rhodes: (Reading)

"By Mr. McLaren:

"Q. Based on your experience, Mr. Pelts, would you state what degree of competition exists at the retail level of mattresses?

"A. I think it is very highly competitive. There is no [fol. 90] question about it. In mattresses, business is more competitive at the retail level than I think most anything in our operation.

"Q. Compare mattresses with some other types of item, say lamps or couch goods, something like that. You say they are more competitive?

"A. Yes. The main reason I would think that, there are certain price categories that people are looking for in the bedding field. When they come out to buy a mattress, they have a certain amount they want to spend, and they know that the categories get into the $39, $49, $59, $69, and on up. But a person comes in to look for a lamp, it is a blind item, more or less. I am a buyer and I couldn't tell you the price of that lamp right there. I couldn't come within five dollars of it."

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[fol. 91] March 16, 1964

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. McLaren:

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DX 35 refers further to the use of the telegram in connection with the Golden Sleep newspaper ad, paragraph 2:

"We will eliminate the phrase 'here is why' and change the panel at the top of the ad to end up in an arrow pointing to the telegram."

And then DX 36 is the dealer promotion guide in which the third page of the Exhibit, the fourth page of the Exhibit, fifth page of the Exhibit, the sixth page of the Exhibit and the seventh page of the Exhibit, all of these pages being pictures of the Sealy ads that went with this sale—do we produce either this telegram, 930L or else one of the same wording with different names on it. It is our contention that that telegram, 930L, is not what it seems on its face.

Mr. Jinkinson: Your Honor, as I understand it, Mr. Fink just told me that he took the position Friday that licensees can't get together and set prices on these mattresses, and the mere fact that they later fair trade doesn't

immunize the proposition that they had no right to get [fol. 92] together and set prices, licensees. Now, that was his——

Mr. Fink, am I stating your position correctly?

Mr. Fink: Yes.

I can't understand what he is talking about and therefore I can't answer him.

Mr. Jinkinson: Me either.

Mr. Fink: But I am sure that my position has been the same as we have always held, that fair——

The Court: I mean a dealer in a fair trade state can fair trade.

Mr. Fink: An individual dealer may fair trade if he sets his own price, but he can't take a price that has been set by other dealers, other people on the same level, and use his fair trade to immunize that act. When they go together—and that is what I said Friday—when those people got together, if we prove that, and they agreed upon a price, that was illegal, and the fact that somebody may have gone out and fair traded after that using that price will not immunize that agreement:

[fol. 93] The Court: Well, none of these dealers are charged with being in this conspiracy, Mr. Fink.

Mr. Fink: Pardon me?

The Court: None of these dealers are charged with——

Mr. Fink: The licensees are, that is what I mean.

The Court: I know the licensees are.

Mr. Fink: That is what I meant.

Normally a dealer doesn't go out and fair trade, it is the manufacturer that—and maybe I misspoke myself, but what I am getting at is that if the licensees got together at a meeting and set the price, the fact that one of them went out and fair traded it, the product, at that price, will not immunize them from the charge under the Sherman Act.

Now, I think that is pretty clear, Mr. McLaren, and I don't think I have said anything else.

Mr. McLaren: That is only part of the statement Mr. Fink made.

[fol. 94] The Court: Up to that point, do you go along with what he said right now?

Mr. McLaren: I understand that that is their contention, and I contend that that is about as doctrinaire an approach as you can take to the antitrust laws.

There is no case that they can point to that says that is the law, but they are trying this new theory out in this case. That is what it amounts to, your Honor, in my view.

Now, the second theory that Mr. Fink talked about, which is the theory of evidence, is that Sealy supervised a conspiracy under which fair trading was part of the conspiracy that he was talking about, and we can find that in Friday's record if we need to. I was surprised to hear him say it.

[fol. 95] The Court: Mr. Fink apparently disavows that now.

Mr. Fink: I don't think I have ever said anything other than what I have just said now, and the fact that the statute upon its face, fair trade statute upon its face, says that no one on a horizontal level can get together and fix a price and come within its exceptions, and that is just what we contend has happened here.

Mr. Jinkinson: I don't see why Mr. McLaren says this is some kind of a new legal proposition. The Miller-Tydings Act and McGuire Act on its face says that.

The Court: Now he has found something in the record.

Mr. McLaren: Transcript Page 3069 Mr. Fink stated—there had been some colloquy beforehand——

Mr. Fink: Let's read all of it, Mr. McLaren.

Mr. McLaren: Mr. Fink said:

> "One of the things that we contend is that Sealy, Inc., itself aided in the setting up of this fair trade program and was an impetus to the thing."

[fol. 96] Then the Court asked:

> "You mean Sealy, Inc., got Ohio to pass a fair trade statute?
>
> "Mr. Fink: No, but our documents have shown that they brought these people together and said, 'Let's fair-trade.' "

Well, we think the documents don't show any such thing, and I would like to know the purpose for which they put in this telegram when it was part of an advertising

promotion, and the Grand Jury members and the defendant's numbers on the document show that it was part of an advertising promotion, yet they put that telegram in as part of their price case.

Now, it seems to me that we certainly have a right to put in the remainder of those particular documents, your Honor.

The Court: Well, for the purpose of explaining that, I think perhaps you are right, but not for the purpose that you otherwise stated.

I think perhaps if this is the basis of a campaign and the center approach of an advertising scheme, you are right.

[fol. 97] Mr. McLaren: That is right. That was the purpose.

The Court: This is your attempt to explain that telegram?

Mr. McLaren: Yes, that is right, your Honor.

The Court: Without going into the question of whether it is a violation of the antitrust law or the fair trade law or any other law. You say this telegram was sent so that it subsequently could be used in advertisements.

Mr. McLaren: The theme of the promotion, yes, your Honor. That is the purpose of the offer, to explain the telegram.

The Court: For that purpose and for that purpose alone, it may be received.

Mr. McLaren: Thank you, your Honor.

At this time, your Honor, the defense rests on the pricing issue on which we have been introducing evidence and, of course, as far as the territory issue is concerned, we will renew our motion to dismiss on the 41(b) at the end of all the evidence, or now, if the Government doesn't have any rebuttal.

[fol. 98] Mr. Jinkinson: Well, did I understand, Mr. McLaren, you have no further evidence to offer in this case either as to territorialization or price-fixing? Is that right?

Mr. McLaren: I have made my statement for the record clearly and succinctly.

Mr. Jinkinson: Counsel has got to make up his mind one way or the other. I think he has to rest his entire defense.

The Court: As I understand it, the defendant has rested.

Mr. Jinkinson: That is what I understand, too, your Honor.

Mr. McLaren: Of course, your Honor, we have taken the position that under Rule 41(b) and the separate territorial claim that we have not put in evidence and we will renew the——

The Court: I understand why, based upon what I said.

Mr. McLaren: Yes, your Honor.

Mr. Jinkinson: Do I understand that he has made an election not to offer any?

The Court: As I understand it, you have rested your case.

[fol. 99] Mr. McLaren: That is right, your Honor.

I assume that under the law, should the Government take an appeal in this case, and should the Court, the Supreme Court, for example, hold that a prima facie case was made out in regard to territory, then we would have a right to put in a defense on territory.

Mr. Jinkinson: That is just exactly, your Honor, what I am trying to escape here.

The Court: You are talking about something two or three years from now.

Mr. McLaren: Very possibly so.

Mr. Jinkinson: I am talking about now, today, I want him to put his defense in.

The Court: As I understand it, he has rested his case, his defense on the case now on trial before me as of the 16th of March, 1964.

Mr. Jinkinson: And I understand that no one has said that he couldn't put in any defense on territorialization.

The Court: I understand that this is an election based on maybe his being misled by the Court as to what the Court said at the end of the Government's case.

[fol. 100] Mr. McLaren: I am sure that the Court is correct and that we have not been misled, your Honor.

The Court: All right.

Mr. Jinkinson: I certainly hope that counsel doesn't contend to the Supreme Court that he has a right to come back and put more evidence in, because he has got every opportunity in the world to put it in.

Mr. McLaren: I have just told you what I intend to contend if there should be a reversal of the Court's decision.

Mr. Jinkinson: All I can say is that I am urging you to put in any defense you have on territorialization in this record.

The Court: I think the record clearly shows that you have urged him on everything but your bended knee to put in more evidence.

Mr. Jinkinson: That is right.

The Court: And I think the record shows why he hasn't put any in. And I am not concerned with what the Supreme Court says three years from now, because I don't even know what they are going to say tomorrow. I haven't got [fol. 101] the Federal Reporter and I don't know what they said yesterday, but I am sure it wasn't what they said the day before yesterday.

So now where are we? Defendant rests.

THEREUPON THE DEFENDANT RESTED ITS CASE IN CHIEF

Mr. Fink: If he has rested, the Government will put in a rebuttal case.

The Court: All right, that is what I am waiting for.

Mr. McLaren: If your Honor please, may I ask a preliminary question of the Government? Are there any other of your proposed witnesses in the Court?

Mr. Fink: Yes, in court, yes.

Mr. McLaren: We would like to invoke the Rule, your Honor.

Mr. Jinkinson: I didn't invoke it on you. I don't know why you can invoke it now.

Mr. McLaren: You had that privilege.

The Court: Maybe you are more of a gentleman than he is, Mr. Jinkinson, and the rule will be invoked. Have your witnesses step out. There is a witness room right around the corner there.

. . . . . .

[fol. 102] March 17, 1964

. . . . . .

The Clerk: Has Jinkinson given up?

Is the witness more loquacious than the one we had yesterday.

Mr. Jinkinson: I don't think so, your Honor. I don't think it's possible—at least I've never seen one that is, your Honor.

Mr. Fink: Your Honor, we call Mrs. Gloria Bennett, please.

The Court: Up here, please.

GLORIA S. BENNETT, a witness called by and on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fink:

Q. Please state your name.

A. Gloria S. Bennett.

Q. Would you state your address, please, Mrs. Bennett.

A. 9900 East Bexhill Drive, Kensington, Maryland.

[fol. 103] Q. What is your occupation, Mrs. Bennett?

A. I am the furniture manager and secretary-treasurer of the U. S. Merchandise Mart Incorporated.

Q. And where is the U. S. Merchandise Mart Incorporated located?

A. Washington, D.C.

Q. Is the U. S. Merchandise Mart a retail store?

A. Yes. We sell to the public brands of furniture, carpeting, appliances and bedding.

Q. How long have you held your position at the U. S. Merchandise Mart?

A. Since 1951, approximately '51.

Q. How many stores does the U.S. Merchandise Mart have?

A. At the present, there are two.

Q. Have you ever had any others?

A. We've had branch stores in the past.

Q. And where were they located, do you know?

A. Pensacola, Florida, Fort Walton Beach, Florida, Annapolis, Maryland, and at present one in Arlington, Virginia.

[fol. 104] Q. Have you ever had any occasion to buy Sealy mattresses or Sealy products from the Sealy Mattress Company of Baltimore, Maryland?

A. Yes.

Q. When was the first time that you purchased mattresses from the Sealy Mattress Company of Baltimore, Maryland?

A. During the year of 1955.

Q. Did you buy these mattresses for resale to consumers?

A. Yes.

Q. Does your store customarily sell mattresses and other articles at a price less than that normally suggested by manufacturers?

A. Well, we sell at a fair price, yes.

Q. Is it normally considered a discount price off of the suggested retail——

A. No. We handle quality lines and brands of merchandise, and we sell at a price that we consider a fair price.

The Court: It is your judgment that it is a fair price; is that it?

The Witness: That's correct.

[fol. 105] The Court: All right.

By Mr. Fink:

Q. And this price is sometimes less than that suggested by manufacturers as the fair price?

A. Yes, yes.

Q. Are you still purchasing Sealy mattresses from the Sealy Mattress Company of Baltimore?

Mr. McLaren: If your Honor please, if I may interpose an objection on two grounds; first, that this is not proper rebuttal but should have been brought in their direct case; I find that the U. S. Merchandise Mart, which appears to be the same organization Mrs. Bennett represents, played a part in the Government's direct case; among others GX 513, 515, 516, 521.

And if your Honor please, the additional objection beyond the one presented yesterday is that this evidence, as I understand, went in in connection with the territorial aspects of the Government's case.

[fol. 106] Now, it seems to me, your Honor, that this is exactly what Wigmore refers to in the sense of fragmentizing the proof.

Secondly, we did not put in evidence of any sort, of course, on the territorial issue.

[fol. 107] The Court: I haven't heard anything yet and I don't anticipate hearing anything in regard to territorialization from this witness. And your objections are overruled.

All right.

Mr. Fink: Would you please read the last question back to the witness.

(Question read.)

By the Witness:

A. No.

By Mr. Fink:

Q. When did you cease buying—or first cease buying mattresses from the Sealy Mattress Company of Baltimore?

A. Well, we first stopped buying them late '56 or early '57.

Q. You are not sure of the exact time?

A. No, I'm not.

Q. Would you tell me how you became aware, you personally became aware that you had ceased to purchase mattresses from Baltimore?

A. I was visiting our branch store in Pensacola, Florida, and I received a message stating that we had been cut off [fol. 108] by Sealy, and they would no longer supply us with their mattresses.

Q. What did you do then, if anything?

A. I was terribly upset, and I sent a telegram immediately to Baltimore from Pensacola.

Q. I show you a document marked Government Exhibit 1168 for identification. Do you recognize that?

A. Yes.

Q. The name is Gloria S. Bennett, U. S. Merchandise Mart.

A. This is my name.

Q. Did you send this telegram?

A. Yes. I phoned the message in to the Western Union Company, and this is a copy.

Mr. Fink: Your Honor, the Government offers Government Exhibit 1168 for identification, being the telegram to Mr. Marty Rudick, care of Sealy Mattress Company of Baltimore, and from Gloria S. Bennett, U.S. Merchandise Mart.

Mr. McLaren: I take it, your Honor, that this is restricted to the price aspect of the case?

[fol. 109] The Court: I so assured you.

Mr. McLaren: All right. We object to its being received on any basis.

The Court: I understand, on the grounds heretofore mentioned. The objection is overruled.

(The said document, so offered and received in evidence, was marked Government Exhibit 1168.)

By Mr. Fink:

Q. Would you please tell us if you did anything else after this period?

A. Upon my return to Washington a week later, we had correspondence with Sealy Mattress Company.

Q. I show you Government Exhibit No. 1169 for identification, which is a letter. This is addressed to Mr. Norman Bennett. Would you tell us who he is?

A. Mr. Norman Bennett is the president of the U.S. Merchandise Mart.

Q. Did you see this letter?

A. I did?

Q. Did you receive this letter from Marty Rudick?

[fol. 110] A. This letter was received from Mr. Marty Rudick of the Sealy Mattress Company in Baltimore.

Mr. Fink: Your Honor, at this time I offer Government Exhibit 1169 for identification, being a letter written to Norman Bennett from Marty Rudick, Sealy Mattress Company, and dated July 27, 1956.

Mr. McLaren: If your Honor please, I believe that this exhibit, if it is a letter dated—what?

Mr. Fink: This is the one of July 27th.

Mr. McLaren: This letter dated July 27, 1956, so far as I can see, refers entirely to territory.

Mr. Fink: Your Honor, it is true that this relates to territory. We are only placing this in as a background to the situation that she is going to testify to, which is entirely for our purposes relating to price, and particularly to the testimony that has been given on the defendant's case.

Now, the only reason we are putting this in is, we feel without it her testimony will have great gaps in it. And [fol. 111] Mr. McLaren would be able to argue to us that, well this isn't—that the reasons we place forward for her being cut off at one time were not the real reasons, but that the reasons placed forward in these letters were.

The Court: On your assurance that this is mere background approaching the subject matter on which we are having this hearing—that is the price subject matter—I will permit it in, again with the same assurance to Mr. McLaren that I have heretofore made in regard to background—I mean, in regard to territorialization.

By Mr. Fink:

Q. In response to this letter, did you do anything?

A. We answered the letter and agreed not to ship merchandise out of the territory.

Q. All right.

Mr. McLaren: I move to strike, your Honor.

By Mr. Fink:

Q. I show you Government Exhibit 1170 for identifica-
[fol. 112] tion——

The Court: Move to strike—for the same reason?

Mr. McLaren: Yes, sir.

The Court: The objection is overruled. I still consider this merely background. If it later develops that this doesn't lead to something, renew your motion. But your objection at this time is overruled.

Mr. McLaren: Your Honor understands our position, I am sure. May we have a continuing objection, and we won't have to interrupt.

The Court: All right.

By Mr. Fink:

Q. I show you Government Exhibit 1170 for identification. It is written from Norman Bennett to Mr. Marty Rudick. Did you in any way help to prepare this letter?

A. I typed this letter.

Q. Did you send this letter—did you personally send this letter?

A. I mailed this letter to Mr. Rudick.

Mr. Fink: Your Honor, the Government offers Govern-
[fol. 113] ment Exhibit 1170 for identification, dated August 21, 1956, to Mr. Marty Rudick, Sealy Mattress Company in Baltimore, from Norman Bennett.

The Court: The objection is overruled. It may be received.

(The said document, so offered and received in evidence, was marked Government Exhibit 1170.)

[fol. 114] Q. Did you receive any further correspondence on this—as to this conversation or transaction?

A. Yes, there is more correspondence.

Q. I am going to show you Government's Exhibit No. 1171 for identification; it is written to Mr. Norman Bennett. It is from Marty Rudick. Are you familiar with that document?

A. Yes.

Q. Did you receive that document?

A. Yes.

Q. Did you receive that document?

A. We did

Mr. Fink: Government offers Government Exhibit No. 1171 for identification.

The Court: The objection is overruled and it may be received.

(The said document, so offered and received in evidence, was marked Government's Exhibit 1171.)

Mr. McLaren: Is that the letter of August 29?

Mr. Fink: Yes. I am sorry, Mr. McLaren, August 29, yes.

[fol. 115] By Mr. Fink:

Q. In response to this letter what, if anything, happened?

A. We agreed not to ship the merchandise out of the Washington——

Q. How did you do that?

A. —area.

Q. By what means?

A. By correspondence.

Q. I show you Government's Exhibit 1172 for identification; would you read that, please.

It is a letter written to Mr. Marty Rudick from Norman Bennett. Did you aid in the preparation or mailing of this?

A. Yes, I personally mailed this letter.

Mr. Fink: Government offers Government Exhibit No. 1172 for identification.

The Court: The objection is overruled and it may be received.

(The said document, so offered and received in evidence, was marked Government's Exhibit 1172.)

By Mr. Fink:

Q. Mrs. Bennett, after you agreed to stop shipping out-
[fol. 116] side of the territory, did you have any conversations with anyone from Sealy Mattress Company, representing Sealy Mattress Company of Baltimore, Maryland, or Sealy, Inc., regarding the prices at which you were to sell your Sealy products?

Mr. McLaren: Objection, your Honor, on the hearsay ground. Also, I believe Mr. Fink misspoke. He said, "Sealy, Inc."

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: Overruled.

By the Witness:

A. Yes.

By Mr. Fink:

Q. Who did you have the conversation with?
A. The sales representative named Mr. Victor Barnett.
Q. And where did this conversation take place?
A. In my store in Washington, at my desk.

The Court: Who is Mr. Victor Barnett?
The Witness: He is a sales representative who handled [fol. 117] our accounts with Sealy Mattress Company.

By Mr. Fink:

Q. Had you met him on other occasions?
A. Yes, he had called on us regularly?
Q. Did he try to sell you mattresses on these other occasions?
A. Yes.
Q. Had he ever given you a card or anything else indicating that he came from the Sealy Mattress Company?
A. Yes.
Q. I was going to ask you that, too; is Mr. Barnett known to you to be employed by the Baltimore licensee?
A. Yes.
Q. When did this conversation take place, to the best of your recollection?
A. Late '56 or early '57, I cannot get the exact time at this point. We had a very serious fire in our store and some of our documents are not available to us, and this is the reason I cannot be more specific. We had a fire in 1959 that destroyed records.
[fol. 118] Q. Who else was present at that time?
A. Employees, my sales staff, and after I received a message from Mr. Barnett, I called my husband, Mr. Norman Bennett, who is the president, because this was trouble.
Q. Do you recall the names of these employees that were there in your place?
A. I could get them if necessary from payroll records, but we have many employees and we have a turnover and I cannot give specific names at this moment.
[fol. 119] Q. Would you please tell me what, if anything, was said by those present?

Mr. McLaren: If your Honor please, same objection we raised yesterday. There is no showing of any authority

by the salesman of the Baltimore licensee to make any sort of statements of policy or any other thing, reason for dealing or not dealing or any other type of statement that would be binding upon Sealy, Incorporated.

The Court: The objection is overruled.

By Mr. Fink:

Q. The question was, would you tell the Court if anything was said by those present?

A. Mr. Rudick—Mr. Barnett came in to tell me that Sealy would no longer be able to sell us merchandise.

Q. Was anything else said?

A. Yes. I was floored. I immediately called my husband because this is trouble, and some of my employees. He said that we were not selling at their $79.50 price and, therefore, we were being cut off and that he was just as [fol. 120] upset as we were about it.

Q. Did he tell you anything about them shopping you or shopping anybody?

A. Yes, Mr. Barnett said the Wilmot Shopping Service had been hired to go around and check dealer accounts to see if the $79.50 price was being maintained and he showed me a list of stores and dealers, rather, in the whole area, that were also going to be cut off by Sealy Mattress Company.

Q. Did he talk about the price—was he talking about your store in Washington, D.C.? Was that included?

A. He was talking about my store in the area. We had already agreed not to ship to our Florida stores anymore.

Q. At that time was there anything else said—I am sorry—was there anything else said during this conversation that you can recall?

A. I was in such shock at this point in losing the line because we had done such a wonderful job with them, we had such a good volume with them, that he was really up- [fol. 121] set about losing our account.

Q. How much a year was your volume? What volume of purchases did you buy from Sealy Mattress Company in Baltimore?

A. The purchases amounted between twenty to twenty-five or thirty thousand dollars a year.

Q. Did you ever thereafter have a conversation with anyone from the Sealy Mattress Company of Baltimore, Maryland?

A. Yes. At intervals I made calls requesting an order be filled because I had a customer who had previously purchased this bedding from us and wanted to add an outfit, but they would never accept my orders.

Q. Did you ever have any further——

The Court: After this conversation—this question hasn't been asked—am I to understand that you were cut off?

The Witness: Yes, sir.

The Court: All right.

By Mr. Fink:

Q. After this conversation, however, did you ever obtain any more mattresses from the Sealy Mattress Company of——

[fol 122] A. Yes.

Q. Did you have any conversation regarding the obtaining of these mattresses with anyone from——

A. Yes.

Q. —from Sealy Mattress Company of Baltimore? Your answer is still yes? I just added, "Did you have a conversation with anyone from Sealy of Baltimore?

A. Yes.

[fol. 123] Q. Would you tell me who you had a conversation with there?

Mr. McLaren: Same objection, your Honor.

The Court: The same ruling. I would like to have the time and place fixed.

Mr. Fink: Well, I will, sir.

By the Witness:

A. Later in '57——

By Mr. Fink:

Q. In 1957?

A. I was visited by two people; Mr. Ben Mills brought in another sales representative of Sealy Mattress Company named Mendez Morstein.

Q. Who is Ben Mills?

A. Mr. Ben Mills—I have been led to believe that he is the plant production manager of making Sealy beds and mattresses and springs in Sealy of Baltimore. This is my understanding of his position with Sealy. He introduced me to Mr. Mendez Morstein who was his new sales representative in my area.

Q. Where did the conversation take place?

A. At my store on 14th Street.

[fol. 124] Q. And who else was present?

A. My sales staff, the ladies in my sales department.

Q. What, if anything, was said by those present?

A. I was told that——

Mr. McLaren: Same objection.

The Court: Overruled.

Go ahead.

By the Witness:

A. They would like to resume doing business with us again.

By Mr. Fink:

Q. Who told you this?

A. Mr. Ben Mills and Mr. Mendez Morstein.

Q. What, if anything else, was said?

A. Yes, they would like me to handle the line again. They missed our business and they would like to reopen our account, and I was delighted because I was suffering from the loss of this line because so many people were still asking. We had pushed this as our No. 1 line and I was delighted that they would come back.

Q. Was anything else said?

[fol. 125] A. Yes, I was also told that I could have the entire line except I could not have the Posturepedic line, which is the top of their line, unless I sold it for $79.50.

Q. Who told you that?

A. Mr. Mendez Morstein and Mr. Ben Mills.

Q. Was anything else said at that time?

A. I told them that I could not sell and I would not sell the Sealy Posturepedic for $79.50.

Q. At that time, did anyone in the room do anything else or did you have any other conversations, or was that it?

A. Yes, I discussed the line with the sales representative and he said that he had another mattress that he would give me that would be the same as Sealy Posturepedic and it would be called Health Guard, and I asked him to please type me up the specs on this Health Guard because when we sell our bedding we have got to know what the coil count is and the core and the density of rubber and all of the details and specs on these units that he wanted me to sell.

Q. I show you Government's Exhibit No. 1173 for identification. It is a document that has American Home Furni-
[fol. 126] ture Carpeting and Bedding, with a Washington address heading on this.

A. This is a division of the U. S. Merchandise Mart.

Q. This is on your stationery?

A. This is my stationery.

Q. Did you prepare this?

A. I did not.

Q. Who did?

A. Mr. Mendez Morstein sat at the typewriter and typed this list up and added the—wrote in the ink figures that are there.

Q. This list that you have here?

A. Yes.

Mr. Fink: Government offers Government Exhibit 1173 for identification.

Mr. McLaren: To the extent that this shows costs, which I take it to be cost to Mrs. Bennett and wholesale prices of the licensee, I object to the document, your Honor.

The Court: Let me see the document so that I can rule intelligently.

You are objecting to the wholesale costs?

[fol. 127] Mr. McLaren: Yes, your Honor. They are the pencil figures.

The Court: Pen or ink?

Mr. McLaren: Pen or ink, yes.

The Court: The objection is sustained to the pen or ink figures. The document other than that may be received.

Mr. Fink: Thank you, your Honor.

(The said document, so offered and received in evidence, was marked Government's Exhibit 1173.)

[fol. 128] By Mr. Fink:

Q. Are you still purchasing Sealy mattresses from the Sealy Mattress Company of Baltimore, Maryland?

A. No.

Q. Was that your decision or was that theirs?

A. This was my decision.

Q. Mrs. Bennett, in any of these conversations that we have talked about, and I include each and every one that we have talked about today, did any representative of Sealy Mattress Company, or Sealy, Inc., tell you that you were being cut off because you advertised at the wrong price?

A. No.

Q. At any time, did they chastise you in any way or argue with you in any way about your advertised price?

A. No.

Q. Did they tell you you were being cut off because you sold at the wrong price?

A. Yes.

Mr. Fink: That is all.

Your witness.

Mr. McLaren: I object to the later point, your Honor. [fol. 129] It came out before I could get an objection. Were you told that by whom and when? Is this a reference to the prior testimony or is this something new?

The Court: Your motion is to strike the last question and answer?

Mr. McLaren: Yes, sir.

The Court: It will be sustained because it is repetitious, that is all. It is already in there in regard to this selling. You brought that out through these other conversations.

Mr. Fink: Do you have any cross?

Mr. McLaren: I think maybe we will.

May I take just a moment, your Honor?

The Court: Surely.

Mr. McLaren: If your Honor please, without waiving our objection, I would like to ask Mrs. Bennett some questions about this background information that went in.

The Court: I think the purpose of that was to—since [fol. 130] the first complaint had verged on territorialization, I think that this tended to eliminate the possibility that they were cut off because of the shipping of mattresses. They were cut off for another purpose, and I accept this evidence only in regard to eliminating the territorialization thing as the cause of the cut off. That is the purpose for which it has been received by the Court. You may ask her if you want.

Cross-examination.

By Mr. McLaren:

Q. Mrs. Bennett, your store in Pensacola, now, that took orders from people in the Florida area at the military airbases down there?

A. Yes.

Q. And then insofar as at least Sealy Merchandise is concerned you were shipping down there from Washington, D.C., isn't that right?

A. Yes.

Q. Now, you also had some stores in Virginia?

A. Arlington, Virginia.

[fol. 131] Q. And you had a store in Maryland, did you?

A. Annapolis.

Q. And did you ship from the store out to those two locations?

A. To the best of my knowledge, all of the merchandise was shipped from the Washington store, to the best of my knowledge, yes.

[fol. 132] By Mr. McLaren:

Q. Now, in Florida, in Maryland, and in Virginia, there are fair trade laws, aren't there?

A. Presumably.

Q. Now, when you shipped from Washington down to Florida and sold out of the store down there, that, shall we say, avoided the Florida fair trade laws——

Mr. Jinkinson: Your Honor, I object as being outside the scope of the direct examination.

The Court: No. The objection is overruled.

Mr. Jinkinson: I also object to calling for a legal opinion of the witness.

Mr. McLaren: I think Mrs. Bennett is very familiar with this particular area.

The Court: The objection is overruled.

By the Witness:

A. I'm not very familiar with this, sir, and I would prefer that you ask my husband, because this would be [fol. 133] his—the policies and shipping methods is in his jurisdiction.

The Court: Well, do you know that you did, or you don't know?

The Witness: I don't know.

The Court: All right.

By Mr. McLaren:

Q. But your prices, when you sold in these other areas, they were as you testified on direct—fair prices?

A. Yes, sir.

Q. They were not necessarily list prices, suggested list prices of the manufacturers?

A. Yes.

Q. And after you agreed that you weren't going to ship out of the greater Washington area, you still shipped to your Annapolis and—what was the other one?

The Court: Virginia.

By Mr. McLaren:

Q. (Continuing) and your Virginia store. Those you took to be within the area; is that right?

[fol. 134] A. To the best of my knowledge, yes.

The Court: Mrs. Bennett, you never testified what you did sell Posturepedics for in Washington, that you considered a fair price.

The Witness: From twenty to twenty-five per cent off of the suggested——

The Court: The $79?

The Witness: The suggested $79.50 price either delivery charges or freight charges.

The Court: All right.

By Mr. McLaren:

Q. And the same in Maryland and Virginia?

A. Yes.

Q. Now, are you familiar with the other stores in Washington that are sort of a discount type of operation?

Mr. Jinkinson: That is objected to, your Honor, as being outside the scope of the direct examination.

The Court: What is the purpose of this?

[fol. 135] Mr. McLaren: Well, I think perhaps, your Honor, that this witness might be able to testify that there are a number of other discount type operations in Washington, and that they do handle Posturepedics.

The Court: Well, I mean if she knows of her own knowledge, but not just hearsay, that somebody heard that.

By Mr. McLaren:

Q. Do you happen to know if that is true?

A. I do not know of my own knowledge.

Q. It may be true, as far as you know?

The Court: Anything may be true that you don't know. It may not be true too.

Mr. Jinkinson: You may step down, Mrs. Bennett.

(Witness excused.)

Mr. Jinkinson: Your Honor, the Government rests.

THEREUPON, THE GOVERNMENT RESTED

[fol. 136] Mr. Jinkinson: Your Honor, we are discussing——

The Court: You have no further evidence?

Mr. McLaren: We have no further evidence, your Honor.

* * * * * * *

[fol. 137] IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff

vs.

SEALY, INC., Defendant.

FINDINGS OF FACT—October 6, 1964

Statement of Proceedings.

1. This is a civil action upon complaint of the United States of America (plaintiff) against defendant Sealy, Incorporated (Sealy) under 15 U.S.C. § 4 to prevent and restrain alleged violation by Sealy of the Sherman Act, 15 U.S.C. § 1 [Complaint, Para. 1]

2. Jurisdiction of the subject matter hereof and proper venue of the defendant hereto duly appear and are not contested. [Complaint, Paras. 1, 2; Answer, Para. 1]

3. The complaint herein was filed on May 31, 1960. It charges that Sealy and certain bedding manufacturers (not named, but designated as co-conspirators), licensed by [fol. 138] Sealy to manufacture and sell items of bedding under the Sealy trade names and trademarks, have engaged in combination and conspiracy in unreasonable restraint of trade in Sealy products in violation of Section 1 of the Sherman Act. Paragraph 16 of the complaint charges that the "combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among Sealy and the co-conspirators, the substantial terms of which have been that, with respect to Sealy products, they agreed:

> "(a) That each member factory will sell Sealy products only within the exclusive marketing territory allocated to it, and will refrain from selling

Sealy products outside such exclusive marketing territory;

"(b) to fix uniform suggested retail prices, and to induce retail stores to adhere to such suggested retail prices, for the purpose of fixing and stabilizing the retail prices of Sealy products."

[Complaint, Paras. 3-5, 12-14, 15-16]

4. Defendant filed its answer on August 1, 1960. It denies the allegations of the charging paragraphs of the complaint; it admits that "Sealy licensees are licensed to [fol. 139] manufacture and sell Sealy products in specified geographical areas." [Answer, Para. 12] The definitions of "Sealy products" in both the complaint and answer exclude private label bedding, and there is no allegation that any licensee was restrained in any way in his manufacture or sale of products bearing his own label. [Complaint, Para. 10; Answer, Para. 6]

5. In its answer, defendant made the following affirmative statements in defense against the charges in the complaint:

"a. The provisions of the Sealy licenses and Sealy's administration of its advertising, merchandising and quality control programs, attacked by the complaint herein, are reasonably ancillary to the proper protection and exploitation by Sealy of its trademarks, trade names, patents, processes and manufacturing and merchandising techniques.

"b. The licensing arrangements between Sealy and its licensees are reasonable and necessary in order to enable said licensees (who are by United States Census definition 'small businessmen') to manufacture, nation- [fol. 140] ally advertise, and sell products of uniform quality under the Sealy trade names and trademarks and thereby to provide effective competition in the bedding industry, and in particular with the well-established, nationally-advertised brands of the corporate manufacturers of bedding; such arrangements are neither designed to nor do they have the effect of unreasonably restraining competition.

"c. The licensing arrangements between Sealy and its licensees do not restrict the manufacture and sale by Sealy licensees of non-Sealy bedding (so long as such

bedding is not passed off as a 'Sealy product'), and defendant avers upon information and belief that many of said licensees do in actual practice manufacture such non-Sealy bedding and sell the same both within and without their licensed territories.

"d. The licensing arrangements between Sealy and its licensees benefit the public through improved construction, uniformity in quality, reduced costs, and the additional competition which such arrangements enable Sealy [fol. 141] licensees to provide in the bedding industry.

"e. The bedding industry of which Sealy and its licensees are a part is characterized in all parts of the United States by a large number of manufacturers and an even larger number of brands and grades of bedding in numerous price ranges, by vigorous competition among manufacturers for the business of retail stores and among retail stores for consumer trade, and the arrangements between Sealy and its licensees have not unreasonably restrained such competition.

"f. The relief for which plaintiff prays is contrary to the public interest in that it would tend to destroy the ability of Sealy and its licensees to compete in the bedding industry and would tend to augment the already substantial market positions enjoyed by the corporate manufacturers of nationally advertised brands of bedding." [Answer, Para. 15]

6. The trial commenced on December 5, 1963, and it proceeded in several separate stages for sixteen trial days, concluding on March 17th.

[fol. 142] 7. Plaintiff's evidence in its case in chief was wholly documentary, consisting almost entirely of defendant's corporate documents, *i.e.*, charter, by-laws, stockholders, directors and committee minutes, and correspondence from its files.

8. At the close of plaintiff's case in chief, defendant filed a motion for judgment of dismissal under Rule 41(b) of the Federal Rules of Civil Procedure, and oral argument was had thereon. The Court made the following ruling and comment: "the motion to dismiss at the end of the Government's case is overruled. However, let me say that should there ever be a decree there will be nothing in it

finding that the territorialization, in my opinion, is a violation of the antitrust laws. . . ." [R. 2575]

9. In its defense, Sealy presented testimonial and documentary evidence expressly limited to the price allegations of Para. 16(b) of the complaint, and at the close of the trial it has renewed its motion to dismiss the territorial allegations of Para. 16(a) of the complaint under Rule 41(b). [see R. 3366-70]

10. While the complaint charges a single conspiracy, plaintiff's evidence was presented in segments relating either to the charging paragraph alleging territorial re- [fol. 143] strictions or the charging paragraph alleging price restrictions, and these two aspects of the complaint are severable. As the attorney for the plaintiff said in oral argument upon defendant's moton to dismiss:

> "There are only two issues in this case; one, have the defendants conspired to fix prices; two, have they conspired to allocate territory." [R. 2517]

Similarly, in his opening statement, counsel for plaintiff said:

> "The defendant, Your Honor, would like to make this a complex matter. There is, however, Your Honor, only one conspiracy consisting of *two charges* or terms of the conspiracy in this case. The first is that the defendant conspired to fix prices, and the second is that the defendant was engaged in a conspiracy to divide territories. Thus, there are two set *of facts,* the existence or nonexistence of which are all that need be ascertained." (Emphasis added) [R. 11]

The Defendant

11. Sealy, Incorporated is a Delaware corporation with its headquarters and principal place of business in Chicago, Illinois, [Complaint, Para. 3; Answer, Para. 3]

12. Sealy's principal business is the licensing of approximately thirty bedding manufacturers (Sealy licensees) to manufacture and sell mattresses, foundations and other items of bedding under the Sealy name and Sealy trademarks in accordance with prescribed specifications, in

[fol. 144] various parts of the United States. [Complaint, Para. 12; Answer, Para. 8; GX 1107, Interrogatory 7, R. 2369]

13. Sealy licensees pay royalties to Sealy for the privilege of using the Sealy name, trademarks, patents and processes [GX 31E, R. 273]; Sealy's royalty income in 1958 was $1.2 million, and in 1959, $1.4 million. [GX 1107, Interrogatory 7, R. 2369]

14. Sales of bedding by all Sealy licensees were $56.6 million in 1957, $56.4 million in 1958, and $58.6 million in 1959. During these three years, the annual sales of individual licensees ranged from a low of $533,000 to a high of $6.5 million. In only one of these three years were there as many as five licensees with sales in excess of $3 million, and in each of the other two years about three-fourths of the licensees had sales between $1 million and $3 million. [GX 1107, Interrogatories 8 and 9, R. 2369]

Part One

The Alleged Conspiracy to Divide Markets and Eliminate Competition is Refuted by the Record Evidence

15. Plaintiff's basic contention is that defendant's territorial licenses were entered into for the purpose of dividing territories and eliminating competition among the Sealy licensee manufacturers and that, as such, they are *per se* [fol. 145] illegal. Defendant claims, on the other hand, that the territorial provisions of its licenses were merely ancillary to the several entirely legitimate business purposes of the Sealy licensing arrangements, and that they do not unreasonably restrain trade in violation of the Sherman Act. In support of its position, defendant cites the origin, history, and development of Sealy and its predecessor companies, the evidence of their lawful commercial activities, and the complete absence of evidence of an unlawful purpose to divide markets and eliminate competition.

I. Early History of Sealy Under Sugar Land Industries

16. The evidence does not show the origin of the Sealy mattress or its manufacturers, but there is a reference

in a registered trademark to the continuous use and application of the "Sealy" mark on bedding since 1889. [GX 987, R. 2272]

17. The record also contains several trademarks for mattresses that were registered by the Sealy Mattress Co., of Sugar Land, Texas, in 1918. [GX 987, R. 2272] The evidence identifies Sealy Mattress Co. in 1923 as the name of the mattress department conducted by Sugar Land Industries (Sugar Land), a trust estate (a form of business organization). [GX 2, p. 3-7111, R. 124]

[fol. 146] 18. In 1923, Sugar Land Industries entered into an option agreement with E. E. Edwards. This contract stated that Sugar Land owned "the trade name of 'Sealy Mattress Company' and various patents, trademarks, copyrights, trade names, and good will connected with the business conducted by . . . [Sugar Land] under the name of Sealy Mattress Company," and including trademarks registered in 1892 and 1895. The contract further stated that Sugar Land had entered into numerous license contracts with mattress manufacturers "in different parts of the United States," giving them the right to manufacture and sell mattresses under Sealy trade names and trademarks in exchange for the payment of royalties to Sugar Land. The contract gave Edwards the option to purchase the trade name of Sealy Mattress Company and all of the intangible assets of Sugar Land's mattress department, including the license contracts with other manufacturers, for $150,000. [GX 2, p. 3-7111, R. 124]

II. Sealy Corporation

A. Organization of Sealy Corporation by E. E. Edwards.

19. E. E. Edwards appears throughout the early history of Sealy as shown in the record. In January 1925, he was chairman of the sixth semi-annual general convention of the Sealy mattress factories. In the minutes of that meet-[fol. 147] ing, which were signed by Edwards, he summarized the comments he had made at the meeting on his plan to purchase the patents, trademarks and good will of Sealy Mattress Co. He further stated that Thomas H. Cobbs, an attorney from St. Louis who had worked with him for the past three years on the Sealy plan, was present

at the meeting. The plan envisioned organization of a new corporation, made up of Sugar Land's Sealy licensees, to take advantage of Edwards' option and purchase the intangible Sealy assets from Sugar Land. [GX 1(10), pp. 3-7084, 7093, R. 112]

20. A contract Edwards entered into with each Sealy licensee of Sugar Land prior to 1925 contained the statement that Edwards and his associates had been working for about seven years on a plan to organize a corporation to take over Sealy, "so that the name could be advertised and used for the benefit of all those manufacturers who hold license contracts, for the manufacture and sale of Sealy mattresses." [GX 2, pp. 3-7110, 7113, R. 124] The contract provided for the renewal of the Sealy licenses with the new corporation, for the election of Edwards as president, and for the licensees to receive three-fourths of the stock while Edwards and his associates received one-fourth of the stock of the new company "for his services in working out the plans for said organization, and pro- [fol. 148] moting the same." [GX 2, p. 3-7114, R. 124].

21. The evidence indicates that E. E. Edwards was with the Sealy Mattress department of Sugar Land, and that he originated and promoted the idea of creating a separate corporation to own the Sealy name and intangible assets and to continue to license mattress companies to manufacture and sell Sealy bedding. The impetus for the organization of Sealy Corporation in 1925 came from E. E. Edwards, who stood to make a substantial profit from his 25% of the stock if the new corporation were successful, and who had little or no personal liability if it were not.

22. Sealy Corporation was incorporated in Illinois in 1925; the incorporators and first formal Directors for purposes of incorporation were E. E. Edwards, who was elected president, Thomas H. Cobbs, the company's counsel, and William Hertz, an advertising man who became general manager in charge of the Chicago headquarters office. [GX 2A, pp. 3-7097-99, R. 151; GX 1(10), p. 3-7093, R. 112; GX 2, p. 3-7110, R. 124] The corporation proceeded with its plans as outlined above, with Edwards exercising his option and directing transfer of the intangible assets of Sealy Mattress Co. to Sealy Corporation in exchange for six promissory notes for $25,000 each from Sealy Corporation

[fol. 149] to Sugar Land. Stock in Sealy Corporation was issued as planned, and the stock was turned over to Sugar Land, along with a conditional reassignment of the assets, as security for the notes. [GX 2, pp. 3-7110, 7119, R. 124]

B. Purposes of Sealy Corporation.

23. The "object for which it is formed" was announced in the Statement of Incorporation of Sealy Corporation, as required for incorporation. In addition to reciting purposes to manufacture and sell and advertise bedding and other goods, the statement of objects begins with these most pertinent purposes:

> ". . . to acquire, own, hold, use, buy, sell, lease, mortgage and otherwise deal in patents, trademarks, copyrights, trade-names, labels, brands, and all rights and interests therein; to license others to use, make, manufacture and sell merchandise under patents, trademarks, copyrights, trade-names, labels and brands . . . ."
> [GX 2A, p. 3-7098, R. 151]

24. At regular meetings of the Sealy licensees, first convened under Sugar Land's Sealy Mattress Co. and continued under the successor corporations, a number of subjects of legitimate interest to the licensees were discussed and put into practice. For example, at the same meeting in January 1925 at which Edwards and the licensees dis- [fol. 150] cussed the forthcoming incorporation of Sealy Corporation and the purchase of "Sealy" from Sugar Land, the following matters were considered: The possibility and advisability of arrangements to finance retail dealers; the specifications for composition of the filler material for mattresses; methods of grading cotton linters for purchase and use in mattresses, the trend of the market price of linters, and the appointment of a committee for joint purchasing of cotton linters; uniform methods of wrapping and packaging mattresses, and the testing of various types of cartons; uniform design and central purchasing of Sealy labels; group insurance for employees, viewing and purchasing metal beds manufactured for Sealy licensees under Sealy names by an outside manufacturer; development of improved Sealy bedsprings and of a new

grade mattress; sales presentations by outside manufacturers of twine and machinery; and advertising and promotion, including a national advertising campaign, window displays, retention of display space in the Chicago Furniture Mart, and participation in national hotel exhibitions. [GX 1(10), R. 112]

25. Similar topics were considered at the next semi-annual meeting of Sealy licensees, in June 1925, at which attorney Cobb reported that incorporation of Sealy Cor- [fol. 151] poration had been completed and the stock issued; for example, the discussion concerned such matters as national magazine ads, joint purchasing, designs and specifications, promotional materials, packaging, and infringement of the Sealy name by a non-licensee manufacturer located in Sealy, Texas. [GX 4 (23), R. 157] This evidence negatives the existence in the origin of Sealy Corporation of a central conspiratorial purpose to divide the United States among competing mattress manufacturers.

26. Continuing to the time of the reorganization of Sealy in 1933, which will be described below, the same kinds of subjects principally engaged the interest and attention of Sealy Corporation and its licensees. For example, at the nineteenth semi-annual meeting of Sealy's executive committee in December 1932, at which there was discussion of the depression-caused financial difficulties of its licensees, and therefore of Sealy Corporation, and of the possibility of a reorganization, there was also consideration of the following matters: The possibility of changing the royalty basis from licensees' sales to the circulation of national publications in licensees' territories, because, as one licensee put it, "the primary purpose of the organization is to secure [fol. 152] national advertising, and that mainly is what each factory secures from the Sealy Corporation"; the desirability of signing enough licensees to operate Sealy factories in 47 cities because, as stated in the minutes, "it was unanimously conceded that the mattress business is very nearly a local business, and it is practically impossible for a foreign factory to go into a local territory and secure any profitable business"; proposed advertising expenditures; the desirability of Sealy employing sales managers and production engineers to visit licensees and consult with them about promotional and production ideas and problems; the semi-

annual promotion and special promotional ideas; and joint purchasing. [GX 7(19), R. 165]

C. Territorial Restrictions in Sealy Licenses.

27. There is no dispute over the fact that the Sealy licenses contain provisions assigning to each licensee an exclusive territory, in which Sealy agrees not to license any other person to manufacture or sell "Sealy products," and outside of which the licensee agrees not to manufacture or sell "Sealy products"; it is also undisputed that "Sealy products" include those manufactured according to Sealy specifications and sold with a Sealy label, and that there [fol. 153] are no restrictions upon the areas where licensees can manufacture or sell their own-brand products as long as they are not passed off as Sealy products. [GX 1012-18, R. 2349, 2354; GX 1020-1106, R. 2354, 2358, 2360, 2361; see GX 74, pp. 3-1487-88, R. 509, and GX 75, p. 3-1482, R. 512, in which the Sealy Board of Directors, meeting in 1954, discussed the question of private brand sales in contiguous territories; then president E. H. Bergmann said that competition between Sealy products and licensees' private brands was permitted in the license contracts, expressly or by implication, and what was prohibited was "sale of private brand merchandise directly or indirectly, under the Sealy banner, or using the Sealy name or prestige in any way to merchandise or sell private brand merchandise."] A territorial provision like this has been in the Sealy licenses from the beginning of the licensing of the Sealy name and trademarks by Sugar Land Industries in the early 1920's.

28. The earliest territories were assigned on the basis of freight rates, with the boundary between any two licensees being the point at which the shipping cost from their factories became equal, so that farther shipment by either licensee would result in a higher shipping cost than a ship- [fol. 154] ment to that location by the other licensee. A list in evidence entitled "Territory Outline License Factories Per Contracts," with a 1925 date on it, shows the area covered out of each of twenty-six cities; the first city listed is typical of all of them, providing as follows:

"RICHMOND, VIRGINIA: Richmond and all adjacent territory in every direction until Richmond railroad freight rates meet lower ones from Mebane, Louisville, Cincinnati, Pittsburgh and Baltimore." [GX 27, p. 3-7252, R. 250; see GX 4(23), p. 3-7128, R. 157, re the existence of 26 licensees]

Each of these cities appears in the record as a city where Sealy licensed a manufacturer. GX 27 also contains marginal dates in connection with some territories, some as early as April 1923. [pp. 3-7253, 7256]

D. Disputes over Territorial Borders.

29. Border disputes arose almost immediately, and as early as April 1925, while Sealy Corporation was still being organized, a dispute between the Richmond and Atlanta licensees gave rise to an expression of sentiment at an Executive Committee meeting that boundaries should be made definite and not left to be determined by changing freight rates. [GX 21, p. 3-7020, R. 229] A motion that [fol. 155] territories be permanently fixed was passed at the Sealy semi-annual meeting in June 1925, and at the meeting in January 1926 this was made firm by a motion that disputed territory boundaries be fixed according to first class freight rates on January 1, 1926, if no fixed boundary is specified in the license contract. [GX 4(23), p. 3-7126, R. 157; GX 11(28), p. 3-7135, R. 182; GX 26, p. 3-7040, R. 247; GX 13(31), p. 3-7161, R. 193, 195]

30. Disputes over boundaries were settled by Sealy Corporation, which had a contract containing territorial provisions with each licensee, and therefore, could not disassociate itself from such disputes. However, in the settlement of such disputes Sealy encouraged discussions and negotiations among the licensees affected, so that there could be an attempt to reach amicable settlements. When a dispute reached the point at which Sealy had to decide the disagreement or interpret its contracts, then the licensees involved could not participate in Sealy's decision even if they were members of the Sealy Board of Directors or Executive Committee. For example, in a continuing boundary dispute between the Seattle, Washington, and Tigard, Oregon,

licensees [GX 29, pp. 3-7046-47, R. 254], the Sealy Executive Committee was unable to act at a 1927 meeting because [fol. 156] the exclusion of Mr. Bowersox "by reason of his being a party to the contracts in question" resulted in the absence of a quorum; the matter, therefore, came before the January 1927 stockholders' meeting, and a decision was made to leave the two contracts in question unchanged. [GX 12(30), p. 3-7156, R. 187]

E. Expansion by Sealy Corporation.

31. Sealy Corporation was not content to stop with the number of licensees secured by Edwards while he was with Sugar Land. On the contrary, specific plans were made to try to increase the number of licensees in order to fully cover all parts of the country, to increase the potential advertising budget, and to exploit the national advertising of the Sealy name and trademarks. In 1932 executives of Sealy were selected to work in various sections of the country, where they would visit prospective licensees to promote their acceptance of Sealy license contracts. [GX 7(19), pp. 3-7213, 7216-18, R. 165] This was not the kind of activity that could reasonably be expected of an organization formed or operated to divide the country among a group of competitors, as Sealy is alleged to have been.

[fol. 157] III. Reorganization of Sealy Corporation into Sealy, Incorporated

32. At the time of the Executive Committee meeting in December 1932, only eight Sealy licensees remained, presumably because of the business failures caused by the depression, and there was discussion of the financial difficulties of some former licensees and their indebtedness to Sealy Corporation. The evidence shows that Sealy Corporation defaulted on the notes payable to Sugar Land, and they were taken up by Sealy Mattress Company of Texas, E. E. Edwards' licensee company. [GX 7(19), pp. 3-7210-11, R. 165]

33. At the same meeting, the Executive Committee discussed reorganization of a company to succeed Sealy Corporation as owner of the Sealy name, trademarks, patents and good will originally purchased from Sugar Land. It

was generally agreed that the basis for royalty payments by licensees should be changed from a per cent of sales to a pro rata amount of national advertising dependent upon the circulation of national publications in each licensee's territory. [GX 7(19), pp. 3-7211-12, 7214, 7215-17, R. 165]

34. At the Executive Committee meeting in July 1933, Edwards, as president of the practically defunct Sealy Corporation, was directed to proceed with incorporation of the new organization, to be known as Sealy, Incorporated. It [fol. 158] was to be incorporated for $150,000, the amount paid to Sugar Land for the intangible Sealy assets. [GX 8(20), p. 3-7228, R. 173]

35. The incorporation was accomplished in August 1933 [GX 31A, R. 263], and Edwards was elected president of Sealy, Incorporated (the present defendant). [See GX 9, p. 3-7236, R. 174]

A. Purposes and Operations of Sealy, Inc.

36. After the reorganization in 1933, Sealy continued to operate much the same as it had prior to the reorganization. Some of the subjects discussed at the Sealy meeting in June 1936 were the following: Rewriting specifications of standard Sealy mattresses with respect to number of coils, type of cover, use of Sisal, etc.; preparation of mat books for distribution to licensees for advertising; and specifications and names of promotional pieces. The minutes of this meeting contain a reference to the election of H. E. Wolf to the presidency of Sealy, and the organization of the office of the corporation in Pittsburgh. [GX 31F(594), pp. 3-6653-54, 6657, 6662, R. 282]

37. At a meeting of the Sealy Board of Directors in November 1937, Earl Bergmann, then representative of the Cleveland licensee, stated that it was absolutely essential [fol. 159] if Sealy were ever to have national significance for all Sealy plants to make the same merchandise and prove to dealers that they are offering a thoroughly uniform product. [GX 36(602), p. 3-6842, R. 321; GX 946, p. 3-1916, R. 2135; see also GX 593 (31E, 32), p. 3-7248, R. 1359, in which it was decided at a Sealy meeting in July 1935 that the Sealy license contract would provide that each factory would manufacture Sealy products in strict accordance with specifications.]

38. In a "president's report" dated December 1939, H. E. Wolf cited what he considered some of the accomplishments during his presidency. He said that Sealy's first aim had been standardization, including such elements as the trademarking of all important Sealy names, setting up complete specifications for Sealy products, development of standard forms to simplify reports to Sealy headquarters, furnishing definite cost figures and specifications for promotions, and furnishing specific instructions for production of items involving special manufacturing processes. Wolf further stated that Sealy had developed many sales features for its licensees, such as Nukraft, a product of the Goodrich Company made available to Sealy plants, the Duralife unit developed by the Pittsburgh licensee with extensive research by the Memphis licensee, and the Posture [fol. 160] Pillow developed by the Sealy Executive Committee with experimentation at many Sealy plants, and with tests and research by Walter DeFries, Sealy's research engineer. Wolf mentioned the improvements in advertising and sales promotion, with the production of a catalog showing items of Sealy merchandise available throughout the country, the development of a mat portfolio containing a number of the most outstanding promotions developed by individual Sealy plants, creation of an effective newspaper institutional advertising campaign together with Sealy screen broadcasts, window displays and direct mail pieces, and the organization of a program of Sealy Sleep Shops. Wolf said that the licensees were well acquainted with Brody's work in connection with sales promotional efforts. He reported on Sealy's expansion in the areas of obtaining new licensees, securing the distribution of Firestone's Airtex, the availability of DeFries as research engineer, and expansion of Sealy's space at the American Furniture Mart in Chicago. In discussion future plans, Wolf proposed a more intensive advertising program, development of new bedding features, starting a strong campaign for hospital institutional business, simplifying the Sealy line, an intensive membership drive to fill in all gaps in the present Sealy national picture, and the accomplishment of economies through standardized [fol. 161] Sealy purchase of ticking, borders and similar items. [GX 46(945), p. 3-3221-26, R. 363]

39. In correspondence with W. J. Craig, a Sealy employee in the Chicago office, in November 1943, J. R. Haas, then president of Sealy, stated that he would not give the Chicago licensee or any other licensee permission to ship Sealy merchandise into unfilled territories without a definite agreement with the licensee that a specific royalty would be paid to Sealy for such shipments. He told Craig that if such service were rendered by any Sealy licensee, he wanted to be advised and to know that it was handled the way he wanted it handled, stating that as president of Sealy and, as such, the one responsible for its actions, he wanted to know what the corporation was doing. [GX 395, R. 1061; GX 396, R. 1059]

40. At a meeting of the Board of Directors in January 1951, then president Bergmann proposed a "Code of Sealy Ethics," which was adopted by the Board to be sent to Sealy licensees "for the purpose of establishing and maintaining friendly relationships between and among the contiguous Sealy plants." Some parts of the "Code" were restatements in layman's language of provisions in the license contracts. [GX 68(627), pp. 3-1653-54, R. 484; see, [fol. 162] *e.g.*, GX 1056, p. 3-2187, R. 2358]

41. In January 1951, the Board of Directors established a procedure for "checking Sealy re-sale items manufactured by the plants for conformity to the specifications." This procedure involved the purchase of mattresses from retail stores in the franchised territory, which mattresses would then be examined to determine whether any licensee was violating Sealy's manufacturing specifications. If a violation was discovered, further purchases and examination would be made in the territory in question. Violations would be called to the attention of the Board of Directors. [GX 68(627), pp. 3-1651-52, R. 484] This procedure later came to be called the Vigilante Program, as noted in the minutes of meetings in 1954. [GX 638, p. 3-1508, R. 1491; GX 75, p. 3-1481, R. 512]

42. The president's annual report to the Sealy stockholders at the meeting in November 1953 did not even touch upon allocation of territories, but contained comments appropriate to a president's annual report to the shareholders of a corporation with regard to the following items: "Financial condition, income, net gains, dividends, sales,

expansion of personnel, new national headquarters, Sealy Sleep Products, Ltd. [a Canadian corporation], legal mat-
[fol. 163] ters, and prospects for the future of the organization." [GX 1011, p. 3-5533, R. 2342]

43. E. H. Bergmann, as president of Sealy, developed various committees composed of licensees and employees on the Sealy staff, which reported to the Executive Committee and Board of Directors, and which served to plan Sealy advertising, promotions, manufacturing specifications and general growth of Sealy. [See Section IIIB, *infra*] For example, at a meeting of the Board of Directors in April 1955, a number of questions arose with regard to various committees, as described in the following paragraphs. [GX 77(642, 979), pp. 3-1436-56, R. 517]

44. At its April 1955 meeting, the Board reviewed the size of the Advertising Committee.

> "The president stated the primary reason for the size of this committee was to balance it between plant representatives doing a large resale and those doing a large promotional business. Also, he felt it was necessary to bring in people who were deemed to be advertising minded and to train new members." [p. 3-1437]

Bergmann recommended that the full Advertising & Merchandising Committee should consist of the chairman of the Exectuive Committee plus six regional members. M. A. Kaplan, the Chicago licensee, expressed the view that the primary objective of the Advertising Committee was:

> [fol. 164] "To prepare and guide advertising policies of Sealy with reference to the amount of money available for expenditure. He stated the job of the chairman in his opinion is to organize the meeting to promote creative thinking among members. . . ." [p. 3-1438]

Kaplan felt that the committee members "should be creative and have directive ability with national effort in mind rather than local effort." A motion was made and passed that the president select a chairman for the Advertising Committee and meet with the chairman to pick committee members, not to exceed five. [GX 77(642, 979), pp. 3-1437-38, R. 517]

45. At its April meeting, the Board received the report of the Planning and Expansion Committee, which had been created in January 1954. The report stated the responsibilities of the committee as outlined by E. H. Bergmann, as follows:

> "A. Study further requirements of Corporation and its Licensees.
>
> "B. Establish goal and set up program of procedure.
>
> "C. Recommend to the Board of Directors expansion of personnel deemed necessary to fill requirements of the Corporation, or additional services to member Licensees." [p. 3-1446]

With respect to the Board of Directors, the committee said that it should at all times:

> "consist of capable, energetic, ambitious and sound [fol. 165] thinking men, *who have the interests of Sealy, Inc., at heart,* and that *it is to the interest of Sealy, Inc.,* to use the talents and abilities of as many of its members as possible, therefore, the Board should be filled at all times with men of that caliber." (Emphasis added.) [p. 3-1448]

The committee commented that many trading areas were not producing the volume of Sealy business that could reasonably be expected, and that the Board should find ways to correct this condition and bring all territories up to the reasonable par; in many instances, for example, the committee said that territories were entirely too far from the sources of supply, so that additional factories or warehouses should be established to serve those areas. [GX 77(642, 979), pp. 3-1446-51, R. 517]

46. In February 1956, a bulletin to the licensees asked for volunteers to serve on the Specification and Cost Committees. With regard to the Specification Committee, the bulletin indicated that a considerable amount of work would be involved because the specifications for the resale line were in need of a complete review and overhaul; the committee would also give attention to other bedding specifications required in Sealy's national work. [GX 777, R. 1771]

47. The type of functions performed by the Advertising & Merchandising Committee is shown in the minutes of the [fol. 166] committee meetings in December 1956 and January 1957. For example, the subjects considered at the December 1956 meeting included: Cleveland's merchandising plan for Anniversary Con.sealy.beds; the Spring Posturepedic program; the 1957-1958 advertising budget; a retail salesman's incentive program for 1957; the January Market; a Posturepedic acetate folder; the semi-annual promotion, the Golden Sleep—1957; plans for a 1957 Holiday Special promotion; review of old TV film commercials; the question of Sealy paying for the preparation of ten-second television commercials; and the scheduling of another meeting to finalize plans for Spring Posturepedic and develop the program for the 1957 Golden Sleep promotion. [GX 662. p. 3-6200-05, R. 1576] At the meeting in January 1957, the Advertising & Merchandising Committee discussed principally the specific elements of the forthcoming promotions, the Spring Posturepedic and the Golden Sleep, including national magazine ads, window displays, sales portfolios, and similar promotional materials. [GX 664. p. 3-6212-17, R. 1593]

[fol. 167] B. Development of Sealy Staff.

48. At a meeting in November 1933, the Executive Committee agreed that it would be necessary to secure the services of some outstanding man in the mattress industry who would devote his time exclusively to Sealy—in other words, a full-time, professional executive, not associated with any of the licensees. [GX 9, p. 3-7236, R. 174]

49. At the Sealy meeting in August 1936, a number of advertising agencies made presentations for a Sealy advertising and promotion campaign, and one of them was selected "to handle Sealy advertising under the supervision of a Sealy advertising committee." A Mr. Handerson, identified as the advertising manager of the B. F. Goodrich Co., discussed joint and cooperative advertising between Sealy and Goodrich, which company was manufacturing the Nukraft pad component for certain Sealy mattresses; Mr. Handerson indicated that he would be willing to act in an advisory capacity to the Sealy Advertising Committee. [GX 33(931), pp. 3-6685-87, R. 290]

50. At this same meeting in August 1936, H. E. Wolf, Sealy president, introduced Brody and Englehardt, who were interested in undertaking contact and general promotional work for Sealy. After they discussed their quali- [fol. 168] fications and the question of remuneration, they left the meeting, and the licensees discussed the relative merits of various persons who were being considered for this job. A motion was made and passed that the selection be left to president Wolf and E. H. Bergmann, a representative of the Cleveland licensee and secretary of Sealy. [GX 33(931), pp. 3-6687-88, R. 290]

51. At an Executive Committee meeting in October 1936, there was a discussion of employment by Sealy of Brody and Englehardt, who would receive salary plus percentage of royalties paid by licensees, out of which they would pay the general administrative expenses of Sealy, including space in the Chicago Furniture Mart and the salary of a trained production man. Their remittance did not include advertising or advertising agency expenses. [GX 34, pp. 3-6697-98, R. 297]

52. The contract between Sealy and Brody and Englehardt was approved at an Executive Committee meeting in December 1936. Among other things, it provided that Brody and Englehardt would do the following: Consult with Sealy's advertising agency regarding preparation of effective advertising and sales promotion material; plan a [fol. 169] program of organization for the purpose of securing additional licensees; contact manufacturers who were potential licensees and try to persuade them to sign a license contract with Sealy; conduct an educational program as to the merits of Sealy products among the personnel of Sealy licensees and of Sealy retail dealers. [GX 932, pp. 3-6700, 6726, R. 2056]

53. At an Executive Committee meeting in January 1937, the secretary read suggested committee appointments, which were approved as read. The following committees were appointed: Advertising Advisory, Engineering, Styling, Merchandising, Cost and Accounting Practices, and Purchasing. [GX 933, p. 3-6760-61, R. 2081]

54. At the Board of Directors meeting in January 1937, president Wolf outlined the proposed committee set-ups recommended by the Executive Committee, and a motion

was made and approved that "the selection of committees be left entirely in the hands of the President." [GX 934, p. 3-6762, R. 2083]

55. In November 1939, Sealy took permanent space in the American Furniture Mart in Chicago and moved its offices from Pittsburgh to Chicago. Brody was elected executive vice president of Sealy and was empowered to hire office [fol. 170] assistants. [GX 45(613), pp. 3-3199-3200, R. 361]

56. In a "president's report" dated December 1939, H. E. Wolf made the following statements with respect to the use of committees to enhance the effectiveness of Sealy, Inc. and with respect to Brody's activities:

> "In order to assure all Sealy group members taking an active part in Sealy affairs, various Sealy committees were set up so that everyone could do his bit in some field, such as advertising, purchasing, etc. While some of these committees have not functioned as effectively as they might, the writer is sincerely hopeful that new appointments in this line will result in the closest possible cooperation among Sealy group members.
>
> All of you are thoroughly acquainted with our various sales promotional effort during the past few years, and Mr. John M. Brody, Jr.'s work in this connection, and for this reason I am not going into detail about this matter." [GX 46(945), pp. 3-3223-24, R. 363]

57. Following World War II, at a Board of Directors meeting in 1945, J. R. Haas, then president of Sealy, "stated that he was in favor of training a man that might eventually become the head of Sealy, Incorporated." He had a man in mind and sought approval to hire him, but no vote was taken on the subject. [GX 956, p. 3-2050, R. 2155; see GX 957, p. 3-2058, R. 2157, in which J. R. Haas spoke at a licensee meeting "on the necessity for proper management and the need for additional top personnel."]

[fol. 171] 58. At the Board of Directors meeting in November 1950, Bergmann appointed the following standing committees: Advertising, Syndicate Selling, Grievance, and Merchandising and New Ideas. [GX 970, p. 3-1870, R. 2195] The make-up of the standing committees was somewhat different when Bergmann nominated them at the Board of

Directors meeting in November 1951: Advertising, Specifications, Promotional Sales, New Ideas and Grievance. The Advertising Committee included, in addition to four licensees, the "Entire Staff" of Sealy. [GX 974, p. 3-1613, R. 2203] In what appears to be excerpts from an agenda for the Board meeting scheduled for April 1954, the 1954 committees are listed as follows: Advertising, Merchandising, Licensee Guidance & Advisory, Production & Cost, Promotional Sales, Specifications, (each committee listed above had as members one or more persons from the Sealy staff), Grievance, Markets, New Sale Ideas, Planning & Expansion, Sales Managers and Upholstery. [GX 1005, p. 3-5366, R. 2318] The 1954 committee list was given to the Directors along with an outline of the functional responsibilities of each committee; the outline of responsibilities is not in evidence. [GX 638, p. 3-1508, R. 1491] The committees were not a great deal different in [fol. 172] 1957; five of the seven committees included at least two members of the Sealy staff. [GX 991E, p. 3-23, R. 2275]*

59. At the meeting of the Board of Directors in April 1955, the Planning and Expansion Committee filed its report, which included the suggestion that all officers should be on the Sealy staff, as employees of Sealy, Inc. It also recommended that the president have his headquarters in Sealy's national office in Chicago. It recommended the addition to the Sealy staff of various sales and promotion members, as well as a Director of Sealy's Upholstery Division. After the report was submitted, a motion was made and passed that in the future all officers of Sealy were to be members of the Sealy staff. [GX 77 (642, 979), pp. 3-1437-38, 1446-56, R. 517]

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*Defendant's answer to plaintiff's Interrogatory 58 describes the activities and personnel of certain Sealy committees between 1957 and 1960 where, again, it is evident that members of the Sealy staff were active on these committees; several were chairmen of committees at least part of the time described. [GX 1113, Interrogatories 58, 62, pp. 58-1–58-8, 62-1–62-2, R. 2372]

[fol. 173] 60. A list of employees of Sealy, Inc., from 1951 to the date of the list, shows that Sealy had a staff of twenty-three professional, technical and clerical persons in February 1957. [GX 991F, R. 2276]

C. Ownership and Licensing of Trademarks.

61. In keeping with its purpose to own and license trademarks, copyrights, trade names, labels, and brands, Sealy was continually interested in new names for its products. At the Executive Committee meeting in December 1936, plans were made for an immediate trademark search covering the ten standard Sealy names and for copyrighting the ten labels as soon as they became available. [GX 932, p. 3-6745, R. 2056]

62. At the Executive Committee meeting in January 1937, it was decided to trademark the name "Little Darling" for crib mattresses if it had not already been trademarked. [GX 933, p. 3-6760, R. 2081]

63. In November 1942, Mr. J. R. Haas was able to speak to the licensees about the progress of Sealy in its merchandising and in establishing and maintaining trademarks, all of which made possible an augmented advertising program for 1943. He also discussed the purchasing of cotton for the Sealy Tuftless mattress. [GX 950, p. 3-1952, R. 2141]

[fol. 174] 64. In 1956 a trademark search was made for Sealy's patent counsel on the trademark "Posture Perfect," and twenty-one references to similar terms used by other companies were found, mostly registered for use in Class 32, for mattresses. [GX 986, p. 3-1304-09, R. 2272]

65. GX 987 is a collection of Sealy trademarks registered between August 1918 and April 1956, inclusive. Thirty-three registered trademarks are included. The cover sheet indicates that these came from the files of Sealy's patent and trademark counsel. [GX 987, p. 3-35-67, R. 2272]

D. Stock of Sealy, Inc.

66. In 1936, E. E. Edwards left Sealy, selling his 325 shares of stock to Sealy for $9,750, or $30 per share; at the same time Sealy purchased 254 shares of stock held by the Southern Commercial Corporation (formerly Sealy

Mattress Co., Edwards' Texas licensee) for $7,620. [GX 932, p. 3-6726-27, R. 2056; see GX 34, p. 3-6693, R. 297]

67. At the stockholders meeting in November 1946, the Sealy stock was put on a 6% dividend basis. [GX 55, p. 3-2090, R. 419; see GX 60(961), p. 3-1693-94, R. 440; GX 962, p. 3-1696, R. 2166]

[fol. 175] 68. The Sealy stock was distributed in such a way that each licensee did not have an equal voice with each other licensee. For example, as of March 1947, U. S. Bedding Company, Sealy's Memphis licensee, owned 344 shares of the 790 shares of Sealy stock outstanding. At the same time, Seniel Ostrow, the Los Angeles licensee, owned 60 shares, and Ernest Wuliger, the Cleveland licensee had 77 shares, so that either of them could vote with the Memphis licensee to exercise voting control of Sealy. The Memphis licensee plus any two of a number of other licensees could similarly exercise voting control of Sealy. [GX 958, R. 2159]

69. At the stockholders meeting in November 1947, the by-laws were amended to provide that no licensee could own or control more than 38% of the common stock of Sealy. [GX 962, p. 3-1697, R. 2166]

70. At the Sealy meeting in July 1948, the president stated that "approximately ninety-eight (98) shares of stock of Sealy, Incorporated was available at $105.00 per share, it being pointed out that each licensee would be entitled to four shares." [GX 964, p. 3-1739, R. 2173]

[fol. 176] 71. At the Board of Directors meeting in November 1951, E. H. Bergmann "reported that he had requests for the purchase of common stock of Sealy, Incorporated by the following persons and corporations:" Brown Reliable Bedding Co., the Detroit licensee, 28 shares, and the president and secretary of this licensee, 50 shares each; the Chicago licensee, 50 shares; the Waterbury, Connecticut, licensee, 10 shares; and president Bergmann, 10 shares. A motion was made and passed authorizing Sealy to issue said shares at $100 per share. [GX 972(629), p. 3-1623, R. 2198]

72. In November 1951, there were 1173 Sealy shares outstanding. The Memphis licensee still had the largest single block of stock—344 shares. At that time the Detroit

licensee and several members of the family that controlled the Detroit licensee together owned 150 shares of Sealy stock, and the Chicago licensee owned 103 shares. Thus, these two licensees plus Memphis could exercise control of Sealy. [GX 973, p. 3-1615, R. 2203]

73. At the Board of Directors meeting in November 1952, E. H. Bergmann

> "stated that he had requests for additional purchases of Sealy, Incorporated stock at $100.00 per share. The requests were as follows: 50 shares by Mrs. Bertha Hart- [fol. 177] man, 5 shares by J. R. Lawrence, 25 shares by E. H. Bergmann, 10 shares by Sidney Sutherland, 10 shares by J. Rudick, 20 shares by the Waterbury Mattress Company, 3 shares by the Empire State Bedding Company, 25 shares by M. H. Yulman, and 21 shares by the Slumber Mattress Company."

A motion was made and passed that purchase of said shares be authorized. [GX 976(70), p. 3-1576, R. 2207]

74. In the president's report to the stockholders of Sealy at the close of the fiscal year ended June 30, 1954, the following statement was made with regard to corporate organization:

> "The corporation has an authorized capital of $250,000.00 consisting of 2,500 shares of common stock, of a par value of $100.00 per share. As of June 30, 1954, 2431 shares of this stock has been issued, of which 959 shares was classified as Treasury stock. Since June 30, 1954, all of the remaining 69 shares of unissued stock was sold. In addition, 359 shares of the 959 shares of stock classified as Treasury stock was offered to stockholders on a pre-emptive basis. All of the stock so offered was purchased except 61 shares which was divided equally on a per plant basis. There remains, as of the date of this report, only 600 shares of Treasury Stock which has not been offered for sale. The Board of Directors on September 20, 1954 passed a resolution that the remaining 600 shares of stock could only be sold on the basis of the pre-emptive rights of the then existing stockholders." [GX 1011, p. 3-5543, R. 2342]

[fol. 178] 75. By September 1956, at which time there were 1900 shares of Sealy stock outstanding, the Memphis license had changed hands, and the new licensee, Slumber Products Co., had only 53 shares, no longer enough to control with another small group of shareholders. However, at this time the Detroit licensee interests owned 474 shares, which, for example, were sufficient when combined with the Kansas City and Chicago licensee interests and E. H. Bergmann to provide effective control of Sealy. A number of other small groupings could similarly control the corporation. [GX 985, p. 3-1347, R. 2238]

76. Sealy's accounting statement for the year ended June 30, 1956, shows 1900 shares of stock issued and outstanding, and capital and surplus of $669,495. This means that the Sealy stock had increased in book value to approximately $352 per share. [GX 996, p. 3-2765, R. 2291]

77. At the meeting of the Board of Directors in November 1956, the Board was apprised of E. M. Wulinger's offer of $4,000 to Sidney Sutherland for the Sealy stock owned by him. (GX 985 shows 21 shares owned by Sidney Sutherland as of September 26, 1956.) On motion made and passed, it was resolved that:

> "the executive office be instructed to ascertain whether or [fol. 179] not it would have any effect on the value of the stock if E. M. Wuliger purchased it, or if the corporation purchased it, and, assuming no change would result, and all things being equal, that E. M. Wuliger be allowed to purchase the stock rather than the corporation." [GX 984(82), p. 3-1351, R. 2232]

E. Royalties by Licensees.

78. The earliest method by which Sealy obtained royalty income from its licensees was through the sale of the Sealy labels that were required to be affixed to all Sealy products. The price of the labels was determined by the values assigned for that purpose by Sealy to the various Sealy products to which the labels would be affixed. The license contract provided certain minimum considerations payable to Sealy each month in the event that the prescribed minimum amount was not paid to Sealy through the purchase of labels. [See, *e.g.*, GX 1016, pp. 3-3410-14, R. 2354.]

79. At an Executive Committee meeting in December 1936, in a discussion of the possibility of the Memphis licensee relinquishing certain territories, E. H. Bergmann stated that:

> "the only basis on which the territorial situations could be worked out, in all fairness to Sealy, Incorporated, was to set up a fair royalty return from each territory, either [fol. 180] by warehouse or direct contact, live up to the expected returns or else yield the said territory to Sealy, Incorporated for licensing." [GX 932, p. 3-6700, R. 2056]

80. Sealy's profit and loss statement for the period January 1, 1937 through November 30, 1939, shows royalties in the amount of $54,247.02. Sealy's profit and loss statement for the period July 1, 1937 to December 1, 1937, shows royalties in the amount of $25,659.60. [GX 940, pp. 3-6881-82, R. 2103]

81. Sealy maintained control over the amount of royalty payments it collected from its licensees. At the Board of Directors meeting in March 1945, Herbert J. Haas, Sealy's attorney, reported on the preparation of new license contracts, and a motion was made and seconded that:

> "the contracts might provide for the grant of permanent license to Licensees when authorized by the Board of Directors after a study of the record of the respective Licensee, but the permanent contracts should contain a provision that upon 90 days' notice from Sealy, Incorporated shall have the right to increase or decrease royalty payments, raise or lower minimums, and make such other changes in the contracts as Sealy, Incorporated shall deem necessary or expedient except that the territory provided in the license shall not be changed, and that no permanent license can be granted except by a vote of three-fourths of the Board of Directors." [GX 53, pp. 3-2020-21, R. 405]

[fol. 181] 82. The royalty payment was later changed to 3% of the licensee's gross sales up to a certain amount, then 2%, and then 1% as various sales plateaus were reached; the minimum monthly payment was retained as

part of the royalty provision. The 3% royalty provision was in Sealy's standard contracts by 1950. [GX 1061, p. 3-2350-51, R. 2358; see also GX 58(960), p. 3-1682, R. 428; GX 59, p. 3-1685, R. 437; GX 60(961), p. 3-1694-95, R. 440; GX 61, p. 3-1706, R. 447; GX 62(619, 963), p. 3-1715, R. 450; see, *e.g.*, GX 1063, pp. 3-2374-75, R. 2358; GX 1064, pp. 3-2390-93, R. 2358; GX 1065, pp. 3-3409-13, R. 2360]

83. Sealy's gross royalty income for the years ending June 30, 1953 through 1956, appears in the records as follows: 1953—$766,501; 1954—$803,861; 1955—$977,721; 1956—$1,167,052. [GX 999A, p. 3-2800, R. 2299; GX 999, p. 3-2790, R. 2298; GX 998, p. 3-2780, R. 2295; GX 996, p. 3-2766, R. 2291]

IV. Evidence Specifically Negating The Territorial Conspiracy Allegations of the Complaint

84. The preceding findings indicate the type of evidence in this record that demonstrates that there has never been a central conspiratorial purpose on the part of Sealy and its licensees to divide the United States into territories in [fol. 182] which competitors would not compete. Their main purpose has been the proper exploitation of the Sealy name and trademarks by licensing bedding manufacturers to manufacture and sell Sealy products in exchange for royalties to Sealy. The fact remains that each licensee was restricted in the territory in which he could manufacture and sell Sealy products. However, the record shows that this restriction was imposed by Sealy and was also secondary, or ancillary, to the main purpose of Sealy's license contracts. The following findings are based upon the evidence specifically related to the territorial restrictions. They show, mostly by representative examples rather than a summary of all the evidence, that: The Sealy executive committee rejected a specific proposal to divide the country among Sealy licensees; Sealy continually sought new licensees to fill in uncovered territory; and licensees relinquished territory that was not within their natural trading areas, so that it would be covered by other licensees, existing or new. These facts are incompatible with a finding that the Sealy licensees conspired to allocate territories among themselves.

85. An excellent example of the manner in which Sealy acted in its allocation of territories to licensees and in its continuing relationship with licensees is provided by plain-[fol. 183] tiff's evidence with respect to several states in the Southeastern part of the United States, namely, North and South Carolina.

[GX 33(931), p. 6679, R. 290; GX 34, p. 3-6698, R. 297; GX 932, p. 3-6700, R. 2056; GX 941, p. 3-6903, R. 2109; GX 942 (40, 605), p. 3-6907, R. 2113; GX 42 (610), pp. 3-3132, 3140, R. 345; GX 52, p. 3-1955-56, R. 398; GX 156, R. 600; GX 157, R. 601; GX 158, R. 602; GX 956, p. 3-2050, R. 2155; GX 159, R. 602; GX 59, p. 3-1685, R. 437; GX 60 (961), p. 3-1693, R. 440; GX 61, p. 3-1709, R. 447; GX 160, R. 608; GX 161, R. 609; GX 62 (619,963), p. 3-1714, R. 450; GX 184, R. 662; GX 63, p. 3-1746, R. 454; GX 189, R. 673; GX 190, R. 675; GX 191, R. 677; GX 192, R. 679; GX 193, R. 681; GX 194, R. 683; GX 195, R. 687; GX 196, R. 689; GX 220, R. 747; GX 208, R. 718; GX 209, R. 721; GX 197, R. 694; GX 198, R. 696; GX 221, R. 750; GX 214, R. 733; GX 219, R. 736; GX 217, R. 742; GX 216, R. 739; GX 218, R. 744; GX 226, R. 763; GX 227, R. 766; GX 222, R. 753; GX 64, pp. 3-1818-19, R. 457; GX 228, R. 768; GX 229, R. 769; GX 211, R. 729; GX 224, R. 757; GX 225, R. 760; GX 199, R. 699; GX 200, R. 701; GX 201, R. 702; GX 624, pp. 3-1851-52, R. 1455; GX 625(67), p. 3-1853, R. 1457; GX 632, p. 3-1585, R. 1477; GX 304, R. 898; GX 307, R. 903; GX 308, R. 906; GX 311, R. 910; GX 295-GX 316, GX 70 (976), R. 495, R. 868-917; GX 80, p. 3-1400, R. 534; GX 389, R. 1042; GX 390, R. 1046; GX 391, R. 1047; GX 392, R. 1049; GX 393, R. 1045; GX 394, R. 1055;

and Georgia and Florida;

GX 941, p. 3-6903, R. 2109; GX 942 (40, 605), p. 3-6907, R. 2113; GX 52, p. 3-1955, R. 398; GX 62 (619, 963), p. 3-1714, R. 450; GX 59, p. 3-1685, R. 437; GX 228, R. 768; GX 229, R. 769; GX 65, p. 3-1839, R. 464; GX 66, p. 3-1849, R. 474; GX 624, p. 3-1851, R. 1455; GX 300, R. 884; GX 300A, R. 887; GX 70 (976), p. 3-1575, R. 495; GX 337, R. 948; GX 339, R. 955; GX 342, R. 959; GX 343,

R. 960; GX 344, R. 960; GX 1008, p. 3-5461, R. 2324; [fol. 184] GX 386, R. 1039; GX 387, R. 1039; GX 81 (983), p. 3-1367, R. 537; GX 388, R. 1040; GX 382, R. 1026; GX 82(984), pp. 3-1350-51, R. 541; GX 1107, R. 2381; GX 1115, R. 2379.

It clearly portrays Sealy's attempt to exploit its name and trademarks to the fullest possible extent by assigning territory to whatever bedding manufacturer is available which can do the best job for Sealy, whether such manufacturer is an existing licensee located near the open territory or a potential new licensee. In attempting to thoroughly cover the Southeastern states with Sealy distribution, Sealy obtained territory from old licensees, found new licensees, shifted territory among licensees, discontinued its contracts with some licensees, and finally found a satisfactory licensee for the Carolinas at Lexington, N. C., but never did, insofar as the record shows, settle on a suitable licensee for Georgia and Florida. This series of events negatives the contention that Sealy is a front for competitors who created it and use it to divide the United States among themselves to avoid competition.

A. Rejection of Proposal to Divide United States Among Existing Licensees.

86. At the reorganization meeting of the Sealy Executive Committee in July 1933, H. E. Wolf proposed that the eight Sealy licensees then in existence divide the entire United [fol. 185] States between them. According to the minutes, this was seriously considered and discussed at length, but rejected. The "vital thing in which each was more concerned was the raising of a large national advertising fund immediately." It was "unanimously agreed that a large number of new factories be brought into the Sealy Corporation." [GX 8(20), p. 3-7228, R. 173] From that time forward, and up to the latest times covered by plaintiff's evidence, the record shows that Sealy continued to seek new licensees to fill in parts of the country not adequately served by existing licensees. It is obvious that an essential inducement to prospective licensees—to get them to under-

take the obligations of a Sealy license—was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties.

B. Sealy, Not Licensees, Granted Territories, Pursuant to Contract.

87. On February 15, 1960, J. R. Lawrence, of Sealy, wrote to the Cincinnati licensee about an agreement betwen the Cincinnati and Memphis licensees whereby Cincinnati took over, on a temporary trial basis, a portion of the Kentucky counties previously served by Memphis. Lawrence made it clear to the Cincinnati licensee that "the [fol. 186] franchising of territories is an exclusive right that is the property of Sealy, Incorporated," and a licensee could not relicense territory to another plant. Lawrence further stated that the Memphis licensee had released the territory in question to Sealy, which had begun negotiations with a prospective Kentucky licensee, so that the most that could be done by the Cincinnati licensee would be to serve the territory on a temporary basis. [GX 234, R. 781; see GX 232, R. 777; GX 233, R. 778]

88. With regard to confusion that arose between the Denver and California licensees as to the state of Nevada, it developed that the state was included in both licensees' contracts with Sealy. On February 16, 1950, J. R. Lawrence, of Sealy, wrote to Herbert Haas, Sealy's attorney, and stated that Earl Bergmann was going to write to the Denver licensee and advise it that if the state of Nevada was listed in its new contract, then, obviously, "it was an error as we cannot franchise territory we do not possess." [GX 176, R. 646]

C. Release of Unused Territory for New Licensees and Temporary Service of Such Territory.

89. At the Sealy meeting in August 1936, there was a recommendation that Sealy licensees release territories [fol. 187] available for new licensee prospects to provide for nationwide expansion, and that licensees no longer be permitted to subcontract portions of their territories. The reasons given were that this would assure additional revenue for Sealy, more equitably distribute the advertising

burden and provide proper distribution to take advantage of nation advertising. The reallotment of territories should be made, it was said, "either on the basis of population, or, to follow the natural, or normal, trading area surrounding a particular manufacturer in a particular locality." [GX 33(931), p. 6677, R. 290] A motion was made and passed that the licensees

> "relinquish and release to Sealy, Incorporated territories other than those making up their normal trading area, that is, territories now being worked advantageously by the respective Sealy factories, and that Sealy, Incorporated be given the power to contract with manufacturers in these territories directly, thus eliminating the sub-manufacturer's contract forming a part of the present plan." [GX 33(931) p. 3-6679, R. 290]

Pursuant to the motion, various licensees in attendance expressed their willingness to release parts of their existing territories to Sealy. [GX 33(931), pp. 3-6677-80, R. 290]

90. At the Board meeting in June 1937, representatives of the B. F. Goodrich Company stated that they had experienced considerable difficulty in having Sealy mentioned [fol. 188] frequently in Goodrich advertising "because Sealy does not have proper national distribution." [GX 937(597,608), p. 3-6786, R. 2088; see GX 33(931), p. 3-6690, R. 290]

91. At the Executive Committee meeting in August 1937, E. H. Bergmann moved, and the motion was approved "that definite sales quotas be set up for the various Sealy territories, with the understanding that any plant failing to live up to its quota should be charged with that quota or forced to release the territory." These quotas were to be based upon "proper trading areas," and also on buying power per family or per capita within each territory. [GX 35(599), p. 3-6824, R. 310]

92. At an Executive Committee meeting in April 1938, president Wolf "outlined the territorial sacrifices made by various Sealy plants for the benefit of the Corporation." At this meeting the Memphis licensee ceded additional territory to Sealy. A motion was made and passed that: "All territory, once ceded to the Corporation, is to be considered Corporation property, and that any such territory which

becomes open due to a member leaving the group, or for some equally good reason, is to revert to the Corporation." [fol. 189] The original owners of such territories were to receive "special permission by the Corporation" to serve such territories until such time as new licensees were appointed, "in order to keep the Sealy name alive" in otherwise open areas. The original owners would "be consulted when a new licensee is brought in and the territory realigned on the basis of the geographical position of the new licensee." [GX 40(605, 947), pp. 3-6906-08, R. 329; see GX 46(945), p. 3-3224, R. 363]

93. At an Executive Committee meeting in April 1940, it was decided that temporary licenses by Sealy to existing Sealy manufacturers for warehouse activities in open territories were granted upon the premise that such manufacturers would "fully service and fully advertise the name of Sealy in said territories or otherwise withdraw from the area." At this meeting, the Memphis licensee was authorized to temporarily service certain Indiana territories, and the Pittsburgh licensee, the Philadelphia territory, out of Indianapolis and Philadelphia warehouses, "until such time as more suitable factory connections can be made for Sealy." [GX 48(616), p. 3-1886-97, R. 370]

[fol. 190] 94. Between November 1949 and February 1950, Sealy corresponded with its Memphis and Cincinnati licensees with respect to certain territory the Memphis licensee was willing to surrender for coverage by the Cincinnati licensee and a proposed new Louisville licensee. In response to a question from Sealy as to the counties it anticipated continuing to work in Kentucky, the Memphis licensee wrote that "we will be willing to surrender everything in Kentucky other than the counties as indicated on this list and the town of Evansville, Indiana." [GX 230, R. 772-73; GX 231, R. 774; GX 232, R. 777; GX 233, R. 778; GX 234, R. 781] On February 22, 1951, the Memphis licensee wrote to Sealy, confirming the fact that it had surrendered Evansville, Indiana, to the Louisville plant. [GX 278, R. 839]

D. Procurement of New Licensees.

95. In his "president's report," dated December 1939, H. E. Wolf, speaking about expansion, said that since his

presidency, Sealy "has had the privilege of welcoming such members as the Barcalo Manufacturing Company, the Marquardt Company, the Fred G. Hodges Bedding Com-[fol. 191] pany, the Ingraham Manufacturing Company, and Osiason, Incorporated." [GX 46(945), p. 3-3224, R. 363]

96. At an Executive Committee meeting in July 1941, J. R. Haas discussed the procurement of new licensees, citing six new plants that would form a nucleus for ten plants contemplated to serve the northeastern Atlantic Seaboard area. He outlined the territory to be covered by four of the new licensees "as allotted by executive committee." [GX 51, p. 3-1914, R. 394]

97. On October 7, 1942, Brody wrote to J. R. Haas, then president of Sealy, to say that he had made a careful survey and sales analysis of all territories then open in the United States and Canada. He reviewed the open territory and outlined an expansion program and proposed a calendar for immediate and future Sealy development work. Brody stated the basis for a proposed new licensing of territories as follows:

> "Based upon population, buying power, trading areas and freight rates, I have divided this open territory into areas each of which is suitable for the operation of an additional Sealy plant." [GX 110, p. 3-5017, R. 563]

[fol. 192] 98. During the years that followed, Sealy was constantly working to secure national distribution of Sealy products and the most effective coverage of all parts of the United States. Sometimes this would involve adding new licensees, while at other times, it meant that Sealy would re-allocate unused or released territory to existing licensees. For example, at the Executive Committee meeting in February 1943, the committee discussed new contracts for Richmond, Cincinnati, Bluefield and Atlanta, the possibility of expansion by the addition of plants in the Carolinas, New England, Upper New York State, Detroit and St. Paul, and the possibility of the Kansas City licensee relinquishing certain counties to the Des Moines licensee. [GX 52, pp. 3-1955-56, R. 398]

99. In May 1944, president Haas wrote to Brody asking for a list of the counties that go to the Buffalo territory, so that Haas could let the Pittsburgh licensee know what

[fol. 193] Haas (Sealy) was willing to do. [GX 148, R. 586] Haas repeated his request a week later and also asked for "a breakdown of all unsold territory" to have on file in Memphis. [GX 149, R. 586] On May 17, 1944, Brody sent Haas a list of counties in the Buffalo territory as it was "assigned by Sealy originally to the Otis Buffalo Company of Buffalo, New York when they were under contract to Sealy." [GX 150, R. 586] On May 23, 1944, Brody sent Haas a "recapitulation of every open Sealy territory," including the following: Philadelphia territory; proposed Charlotte, N. C., territory; eastern New York State Sealy territory; proposed Oklahoma territory; Minneapolis, St. Paul territory; proposed Mexico territory; and four Canadian territories by Provinces instead of Counties. [GX 151, R. 587]

100. In a meeting in July 1947, the Board of Directors approved a contract with the U. S. Bedding Co., the Memphis licensee, for the Dallas, Texas, and Oklahoma territory. The Board also decided that the state of Arizona and the area around El Paso, Texas, should be combined as a separate territory. The Board also discussed an application for the Minneapolis territory and the fact that the Kansas City licensee had sold its bedding business to a new company, for which a contract was being prepared. [GX 58(960), pp. 3-1679-82, R. 428]

[fol. 194] 101. On September 21, 1948, J. R. Lawrence, of Sealy, wrote to Ross S. Rosenberg, Sanitary Bedding Co., St. Paul, Minnesota, advising him that the executive committee of Sealy had accepted his application for a franchise in the Minneapolis territory, and that his contract would start January 1, 1949, on a straight royalty basis. Lawrence outlined the territory allocated "under this franchise," calling attention to those counties around the borders of the territory, in states mostly within the territory, but which counties were already franchised to other Sealy licensees and were, therefore, excluded from this territory. [GX 186, R. 666]

102. On August 1, 1950, the Portland licensee wrote to Sealy, stating that it had been developing trade in the Alaskan Territory for several years since advised that it could do so by J. R. Haas; the licensee asked that this territory be added to its contract because "we are expend-

ing funds and efforts to develop the business in that territory." [GX 246, R. 806] On August 21, 1950, E. H. Bergmann responded to the Portland licensee and said that with Alaska seeking statehood, some day "it may, within itself, be able to support a full licenseship possibly not without a plant but the status of a licenseeship on the part of who [fol. 195] ever may be handling it for Sealy." Bergmann said that the way to handle Alaska was to give the Portland licensee a separate contract for Alaska with a low minimum royalty for the first three years, and then determine the value of the territory when the contract comes up for renewal. [GX 247, R. 806; see GX 248, R. 807]

103. On January 16, 1951, the Richmond licensee wrote to J. R. Lawrence, acknowledging notice that the Maryland Bedding Company, Baltimore, Maryland, had taken on the Sealy franchise as of January 1, 1951. The Richmond licensee said:

> "Frankly, I am pleased that you have a licensee in Washington and Baltimore and I hope that they will do a good advertising business in this area. If so, they will eventually be helpful to the Richmond factory." [GX 266, R. 818]

104. At a meeting of the Board of Directors in March 1951, E. H. Bergmann introduced Irving Fisher of the Fisher Products Company, Chester, Pennsylvania, and stated that Fisher was seeking a license agreement in the Philadelphia area. J. R. Lawrence outlined "his negotiations with Mr. Fisher and a report of his trip to Chester, Pennsylvania. Mr. Fisher gave an outline of his intended handling of the Sealy franchise in that area and after [fol. 196] answering questions of the Board members was excused from the meeting." A motion was made and passed that the Fisher Company be granted a contract for the Philadelphia area, "details in regard to territory arrangements, etc., be worked out by Sealy officials." [GX 69, pp. 3-1644-45, R. 490]

105. On March 27, 1951, E. H. Bergmann wrote to T. C. Engelhardt, the Reading, Pennsylvania, licensee, as follows:

> "We have a licensee interested in taking on the Philadelphia territory and in order to round out a territory for him that will fit into his present operations it is

going to be necessary for us to give him the county in New Jersey which embraces the City of Trenton from the present Passaic contract.

"In order that we may tie into this county correctly and give him a straight run to Trenton I want to include in his territory two counties which have been serviced by the Reading plant during the past. These two counties are Montgomery and Buck.

"I am pleased to have you tell me that you felt that it would be possible for this change in the territory to be worked out with Philadelphia and I would appreciate having you write me and advise me that you have no objection to the placing of these two counties in the new proposed Philadelphia licenseeship." [GX 279, R. 840]

E. H. Bergmann wrote to the Reading licensee again on April 13, 1951, repeating that:

[fol. 197] "What I want to do is to give the entire Montgomery and Buck counties to Philadelphia so as to round out their territory and I wish you would govern yourself accordingly. I am quite sure that these few little towns will not make too much difference to you and it is going to make a tremendous difference to me and to Philadelphia to get them started with a full complement of territory." [GX 280, R. 842]

Sealy assigned certain additional counties to the Reading licensee, and on May 23, 1951, Bergmann wrote to Engelhardt, saying that he was happy to include these counties as part of the Reading territory, and Bergmann thought that they would "more than justify the exclusion of the few cities that you have covered in Montgomery and Bucks Counties." [GX 281, R. 844] On May 7, 1951, Bergmann wrote to the Chester licensee, stating that he was "not in a position to guarantee to you that I can amend the contract at this time to include Montgomery and Buck counties." However, Bergmann said that he had written a letter to Reading calling that licensee's attention

"to the fact that inasmuch as they have not objected to my letter to them stating that it was my desire to include these two counties in your contract that I assumed they

were willing to cooperate and that I was issuing their new contract on that basis. I have every reason to believe that Ted Engelhardt is going to be perfectly willing to go along on that basis, but I don't want to definitely promise you the contract until I have his verbal or written okay." [GX 285, R. 850]

[fol. 198] 106. On July 10, 1953, J. R. Lawrence wrote to E. H. Bergmann regarding certain counties being added to the Reading and Pittsburgh contracts. Lawrence said

"This takes care of all the open counties in Pennsylvania with the exception of Susquehanna. I believe it was your intention to have all the open counties covered by some plant, and I will appreciate it if you will let me know in whose area you would want Susquehanna. As I see the map, you have two possibilities, one the Rochester plant and the other the Reading plant." [GX 345, p. 3-5058, R. 960]

Bergmann responded on July 23, stating that Susquehanna should go in Ted Engelhardt's territory [Reading licensee]; Bergmann doubted whether the Rochester licensee would do much with that county because "it is quite a ways from their plant," and so he assigned it to the Reading territory. [GX 345, p. 3-5057, R. 960]

107. In September and October 1955, E. H. Bergmann corresponded with H. B. Fouts, the Des Moines licensee, regarding a request that Des Moines relinquish some territory to be combined with certain territory that would be relinquished by the Chicago licensee in order to work out a franchise for a Davenport company. Fouts stated that the Des Moines licensee would not consider giving up any part of its territory; he said that:

[fol. 199] "there was a time when we were not too interested in the city of Davenport itself, but times have changed, we have completely reorganized our sales force, and we have spent considerable time and money in Davenport and the adjoining territory. As a result, our business has improved greatly. That being the case, we would not for one minute even consider giving up Davenport to anyone let alone a new licensee." [GX 377, R. 1016]

Fouts raised the question why the Davenport Bedding Company was suddenly interested in a Sealy franchise; and he suggested that the reason might be that the company was seeking the advantage of the name Sealy to help it sell private brand merchandise in contiguous territories. Bergmann responded that the matter was now closed, but in answer to Fouts' question, he said that he had been "trying to contact the Davenport Bedding Company in the right way for over six months. Actually we went to them, they did not seek a Sealy licenseeship." [GX 376, R. 1015; GX 377, R. 1016; GX 378, R. 1021]

108. In a letter to the Rochester, New York, licensee, dated May 11, 1956, E. H. Bergmann wrote about a discussion that had arisen at a Board meeting relating to the recommendations of a management consulting firm "concerning the realignment of territories in order to obtain complete coverage. It was pointed out that many licensees are not exploiting all their territory, and an effort [fol. 200] should be made to have them relinquish such territory that they are not utilizing to the fullest possible extent." The Board of Directors had decided that the Sealy executive office should:

> "Set up machinery to work with all licensees not presently achieving 80% of par in all major divisions of their territory in order to either (A. offer every assistance to such licensee to enable such licensee to bring about such better development,) or (B. obtain *voluntary relinquishment* of the undeveloped territory for realignment,) and (C. to make a semi-annual report to the Executive Committee of the Board disclosing the progress resulting from such efforts, and all legal steps be taken to continue and implement the program so as to bring about complete nationwide development)." [GX 383, R. 1028]

109. The position of Sealy vis-a-vis each licensee was further discussed in a letter from E. H. Bergmann to the Louisville licensee, dated June 4, 1956, relating to the possibility of certain territorial adjustments for the benefit of the Louisville licensee, which the licensee felt would also work to the advantage of Sealy. Mr. Bergmann stated that the licensee's request, which he was unable to grant, related to:

"a subject of which this office is constantly aware, namely, the relinement of territories between contiguous plants for the over-all betterment of the national picture, the specific improvement of one plant, the avoidance of any harm or penalty to the plant being asked to cooperate with the national office in facing up to the realistic facts concerning sales performances.

[fol. 201] "Unfortunately, all territories are under contract which requires voluntary acquiescence to any suggestions of relinement. This writer over a period of years has found this to be a most difficult problem. . . . We work constantly at the problem, and it is surprising how many little adjustments of a county or two are made each year because of the gentle negotiations going on at all times to improve the national position with no particular harm to any one individual operating unit." [GX 385, R. 1035; see also, GX 384, R. 1032]

E. Termination of Licenses.

110. At the Board of Directors Meeting in November 1938, a letter from the Philadelphia licensee was read. A motion was made and passed that "Sealy cooperate with the Philadelphia plant, in view of their apparent sincerity, accepting their stock in part liquidation of their account, with a minimum of $100.00 per month subject to change upon notice by the Board with the understanding that a definite arrangement will be made by Philadelphia for paying up its arrears." At this meeting, president Wolf also informed the Board that "the St. Paul contract had been terminated, upon request of the St. Paul plant, and that this organization therefore was no longer part of the Sealy group." [GX 601, pp. 3-6957-58, R. 1391]

111. At a meeting of the Exeeutive Committee in April 1940, a motion was made and passed that Sealy "accept [fol. 202] cancellation of the contract between Sealy, Incorporated and the Sealy Mattress Company at Philadelphia, Pennsylvania." President Haas was instructed "to effect a settlement from Philadelphia to cover obligations due Sealy." [GX 48(615), pp. 3-1877-78, R. 370]

112. At a meeting of the Executive Committee in June 1940, president Haas notified the committee that he executed on behalf of Sealy "a termination of the contract between

Sealy, Incorporated, and the Sealy Mattress Company of Tigard, Oregon, in line with the request of Mr. M. P. Cady of Tigard." All obligations of the Tigard licensee to Sealy had been settled in full. The termination was conditioned upon Sealy's acceptance as a licensee of the Pettit Feather Bedding Company of Portland, Oregon, which would absorb the Sealy Mattress Company of Tigard. At the same meeting, Haas notified the executive committee that he had executed a license contract between Sealy and Pettit. [GX 49, p. 3-1888, R. 383]

113. At the Executive Committee meeting in May 1947, the Milwaukee licensee announced that its stockholders had agreed to sell the company to the Sealy Mattress Company of Illinois, the Chicago licensee. A motion was made and passed, with M. A. Kaplan, of the Chicago licensee, not [fol. 203] voting, that Sealy consent to a transfer of the Milwaukee franchise to the Chicago licensee. [GX 57(959), pp. 3-1673-74, R. 414]

114. At the meeting of the Executive Committee in May 1947, J. R. Haas "made a report regarding his negotiations with the Kansas City and Fall River Licensees. He stated that neither of the present Licensees were doing a first class job, and had given each of them until June 1, 1947, to make a showing, and if such showing was not satisfactory to him, he thought that new licensees should be appointed." A motion was made and passed authorizing Haas to handle the question of continuing these licensees or appointing new licensees. [GX 57, p. 3-1676, R. 414] At a meeting of the Board of Directors in July 1947, J. M. Brody, speaking on Sealy sales and prospects, "called attention to the fact that Sealy had a new Licensee at Kansas City"; Brody spoke highly of the new licensee and said that he expected that Sealy would have a very strong situation in this territory. [GX 58(960), pp. 3-1679, 1682, R. 428]

115. At a meeting of the Board of Directors in June 1950, E. H. Bergmann reported that the Charles A. Maish Company of Cincinnati "had decided not to sign the agreement tendered to them at the direction of the last meeting of the Board and that the working arrangement with the Charles [fol. 204] A. Maish Company would terminate on June 15." A motion was made and passed that the open territory

be serviced by the neighboring plants "on a temporary basis until new licensees are located for the area." [GX 66, pp. 3-1849-50, R. 474; see also GX 250, R. 812, in which Sealy states, on November 8, 1950, that the Maish Company "has closed their plant because of labor and management difficulty;" see GX 245, R. 804; GX 250-65, R. 812, 817]

116. At a meeting of the Board of Directors in September 1950, the Board approved the minutes of the Executive Committee meeting of August 1950, except that the Board further discussed the franchise of the American Bedding Company of Charlotte, North Carolina. E. H. Bergmann gave the details concerning the change in ownership of the Charlotte licensee, and J. R. Lawrence provided information regarding sales figures and performance of the licensee. A motion was made and passed that the license contract be continued with the new owners. [GX 67(625), p. 3-1853, R. 479]

117. At a meeting of the Board of Directors in September 1952, a discussion arose as to the renewal of the license contract of American Bedding Company, of Charlotte, North Carolina. W. L. Harris, of the Charlotte licensee, spoke about the accomplishments of his company under the [fol. 205] Sealy franchise, answered questions pertaining to the management and operation of the company, and requested renewal of the contract. Harris was excused from the meeting, and a motion was made and passed that the manufacturing facilities and sales effort of the licensee were deemed inadequate, and the licensee was not entitled to a renewal. As required by the license contract, this motion received a two-thirds vote. The motion contained the following introductory clause:

> "from the report of the officers of Sealy, Incorporated it is apparent that the manufacturing facilities and sales effort of the American Bedding Company are insufficient to meet the requirements of Sealy, Incorporated in the territory covered by the license to the American Bedding Company, and that such manufacturing facilities and sales effort have not been improved during the license period, which began October 1, 1949, and ends September 30, 1952." [GX 632, pp. 3-1585-86, R. 1477]

118. At a meeting of the Board of Directors in November 1956, the Board was "apprised of the problems which had been encountered in connection with the Orlando plant, beginning in June, 1956, and continuing to their termination by purchase of the plant by the corporation on September 7, 1956." [GX 82(984), p. 3-1348, R. 541]

119. Plaintiff's evidence, read as a whole, conclusively [fol. 206] proves that the Sealy licensing arrangements were developed in the early 1920's for entirely legitimate business purposes, including royalty income to Sugar Land Industries, which owned the Sealy name, trademarks and patents, and the benefits to licensees of joint purchasing, research, engineering, advertising and merchandising. These objectives were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage.

[fol. 207] V. Retail Price Fixing by Co-Conspirator Stockholder-Licensees with Sealy, Inc. and its Predecessor, Sealy Corporation.

120. At the sixth semi-annual general convention of the Sealy member factories in January 1925, the member factory representatives agreed upon and set the advertised retail price of two Sealy mattresses (GX 10 [alias of GX 1]; Tr. 108-124, 181; Doc. 3-7091).

121. In January and June 1927, the stockholder-licensee representatives at the semiannual conventions of Sealy, Inc. discussed and agreed to maintain the resale price on the Sealy tuftless mattresses (GX 12-13; Tr. 187-190, 193-193; Dec. 3-7150, 3-7160).

122. Acting as the Executive Committee of Sealy Corporation in November 1927, the member factory representatives agreed upon the resale price for seven Sealy products (GX 14 [alias of GX 5]; Tr. 196; Doc. 3-7054).

123. At the eleventh semi-annual convention of Sealy Corporation in January 1928, the twenty member factory representatives present decided upon the resale prices for seven Sealy products (GX 15 [alias of GX 6]; Tr. 203-204; Doc. 3-7169).

[fol. 208] 124. At the Sealy convention in January 1931, fourteen member factory representatives discussed and set the retail prices for various Sealy products (GX 17; Tr. 208-212; Doc. 3-7188, 3-7189).

125. Acting as the Executive Committee of Sealy Corporation, in December 1932, the stockholder-licensee representatives "agreed upon" and set the resale prices for eight Sealy products (GX 19; Tr. 223-225; Doc. 3-7220 to 3-7222).

126. The Executive Committee of Sealy Corporation, consisting of the stockholder-licensee representatives, in July 1933, agreed that no cut prices were to be made on any of the articles advertised in national magazines. The minutes of the meeting interpret that agreement to mean that no cut price could be made without general authorization of the group and then only on a uniform basis throughout the United States (GX 20; Tr. 226-227; Doc. 3-7227 to 3-7229).

127. All of the stockholder-licensee representatives in July 1935 were of the decided opinion that uniform names and retail prices should be adopted, and therefore agreed upon uniform names and set uniform retail prices for various Sealy products (GX 593; Tr. 1359-1361; Doc. 3-7245).

128. Acting as the directors and officers of Sealy, Inc. in June 1936, the stockholder-licensee representatives unanimously agreed that $19.75 would be set as the lowest advertised retail price on any Sealy mattress (GX 594; Tr. 1361-1363).

[fol. 209] 129. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in March 1937 changed and placed into effect the resale prices on three Sealy products. At that meeting letters were read from the Houston and Los Angeles licensee-members requesting permission to offer Sealy innerspring mattresses at less than the minimum resale price ($19.75) established by Sealy, Inc. The stockholder-licensee representatives agreed that the Houston and Los Angeles licensee-members should be advised that Sealy could not make any exception to the general ruling (GX 595; Tr. 1366-1369; Doc. 3-6772, 3-6775).

130. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in May 1937; agreed that 125 per cent would be the maximum markup on Sealy goods in place of the 100 per cent markup previously set, this 125 per cent markup to be based on the standard wholesale price. They further agreed "that all Sealy plants be compelled to adhere to *all established Sealy prices,* unless permission to the contrary was officially granted by Sealy, Incorporated" (emphasis supplied) (GX 596; Tr. 1373-1374; Doc. 3-6777, 3-6779).

131. The Executive Committee, comprised of the stockholder-licensee representatives, in May 1937 agreed that the Texas and Kansas City licensee-members be permitted to offer the Sealy tuftless mattress at $39.50 resale due to the conditions existent in those localities (GX 596; Tr. 1374; Doc. 3-6779).

[fol. 210] 132. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on July 1, 1937 agreed upon and set the minimum retail price on the Sealy tuftless mattress run singly or in combination with other items. They further agreed that the Sealy member factories should be permitted to run a special promotion during February and August if they so desired, during which the maximum markup would be increased to 160 per cent instead of the usual 125 per cent (GX 597; Tr. 1377; Doc. 3-6788, 3-6789).

133. At the meeting of the stockholder-licensees of Sealy, Inc. in July 1937, Mr. J. R. Haas, the Memphis stockholder-licensee representative and the vice president of Sealy, Inc. at that time, made the announcement that the Sealy tuftless mattress had been removed from the standard Sealy line and could be offered under a class label with the understanding that the resale price would not be less than $39.50 (GX 598; Tr. 1379; Doc. 3-6806).

134. At the August 1937 meeting of the Executive Committee of Sealy, Inc., which committee consisted of stockholder-licensee representatives, Mr. John B. Brody made a presentation concerning the Crestline brand and a copy of his report was made a part of the minutes of the meeting. The report stated that upon the adoption by the Sealy stockholder-licensees of an off brand for merchandising by

Sealy stockholder-licensees, Messrs. Brody and Englehardt would submit their recommendations for effective handling [fol. 211] of this off brand for Executive Committee approval. Point 5 of the ten-point report is entitled "Control of Resale Prices." Under point 5, Messrs. Brody and Englehardt suggested that the control of the resale prices, as set by the stockholder-licensees of Sealy, Incorporated at the last national meeting, be established by the Executive Committee in line with the unanimous agreement of the stockholder-licensees. The control referred to is that of a limitation in markup on wholesale cost to a maximum figure of 200 per cent. This recommendation was adopted by the stockholder-licensee representatives present (GX 599; Tr. 1384-1385; Doc. 3-6810, 3-6814 to 3-6819).

135. Acting as the Executive Committee, the stockholder-licensee representatives in August 1937 agreed that the Sealy tuftless mattress would be reinstated to the standard Sealy line with the understanding that the garnetted Tuftless could be sold at $39.50 under a class label, but the air woven Tuftless was to be sold under the standard label at $49.50 (GX 599; Tr. 1385-1386; Doc. 3-6820).

136. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in October 1937, agreed that a new mattress should be added to the Sealy line, with practically the same specifications as the Fast Asleep, and to sell at $19.75 resale, and that the Truease mattress would be sold at $24.75 retail (GX 600; Tr. 1389-1390; Doc. 3-6834, 3-6839).

[fol. 212] 137. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on November 12, 1937, agreed upon and set the price of the Sealy Tuftless mattress and further that the new Truease mattress would be made to the present specifications of the present Sleep Charm with this new Sealy Truease to retail at $24.75 (GX 602; Tr. 1395-1397; Doc. 3-6845).

138. The official rulings of the Executive Committee of Sealy, Inc., which was comprised of the stockholder-licensee representatives, for the year 1937, record that:

(a) A new mattress was to be added to the Sealy line with Fastasleep specifications to sell at $19.75 resale;
(b) The garnetted Tuftless was to retail at $39.50, the

air woven Tuftless at $49.50, and the Sealy Tuftless was to be reinstated to standard Sealy line at $39.50; and

(c) The name Sleep Joy was to be confined to the $39.50 bracket.

These official rulings were formally approvel by the stockholder-licensee representatives at the Sealy annual meeting held on December 6, 1937 (GX 603, 604; Tr. 1398-1399, 1401; Doc. 3-6852, 3-6853, 3-6857).

139. At the meeting of the board of directors of Sealy, Inc. on November 4, 1938, the president, Harry E. Wolf, who was also a representative of the Pittsburgh stockholder-licensee, questioned the stockholder-licensee representatives [fol. 213] comprising the board of directors as to their wishes with regard to the maintenance of a $19.75 Sealy minimum price and following considerable discussion, the matter was put to a vote. The majority of the stockholder-licensee representatives favored the retention of the minimum price. Facts presented at the stockholder-licensee meeting the following day also favored the retention of the minimum price (GX 601; Tr. 1391-1392; Doc. 3-6955, 3-6956).

140. The minutes of the Sealy, Inc. Executive Committee meeting of April 26, 1938 record that stockholder-licensee representatives Louis Haas and Joe Rogers agreed to discontinue advertising the Sealy Rest at $39.50 and to replace all floor samples of the Sealy Rest with samples of the Sealy Kraft at $39.50 (GX 605; Tr. 1403-1404; Doc. 3-6914).

141. The stockholder-licensee representatives at the Executive Committee meeting on April 26, 1938, agreed upon and set the price for the Sealy Fastasleep and agreed upon and set the new minimum price for Sealy products at $19.75 (GX 605; Tr. 1405; Doc. 3-6917).

142. At the meeting of the board of directors of Sealy, Inc. in June 1938, the stockholder-licensee representatives present heard the official rulings of the acting president and the Executive Committee. These rulings stated (1) the minimum Sealy price was then established at $19.75 [fol. 214] instead of $19.95, (2) the new resale price of the Super Sealy Rest was then established at $49.50, (3) a slight variation was permissible in the wholesale price of

promotional Sealy products but not in the resale price, (4) it was permissible for dealers to make an allowance on promotional products, such as a $5.00 trade-in allowance, provided the established $19.75 minimum retail price was maintained. The stockholder-licensee representatives changed the official ruling dealing with permissible allowances to provide that an allowance was permissible with the understanding the established $19.75 minimum retail price *must be* maintained (GX 606; Tr. 1408-1409; Doc. 3-6933, 3-6934, 3-6936).

143. The stockholder-licensee representatives, at the board of directors meeting in June 1938, decided that the New York licensee-member and any other licensee-members desiring to do so would be granted permission to sell a Posture Pillow mattress with Nukraft center at a price of $39.50. They further agreed that the $19.75 minimum retail price would be retained (GX 606; Tr. 1410; Doc. 3-6946, 3-6948).

144. The stockholder-licensee representatives, at the meeting of the Executive Committee of Sealy, Inc. on November 9, 1938, agreed that the stockholder-licensees should be granted permission to manufacture the Super Sealy Rest in Posture Pillow design to retail at $49.50 (GX 607; Tr. 1412-1413; Doc. 3-6993).

[fol. 215] 145. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in November and December 1938, changed, agreed upon, and set the retail prices on various Sealy products (GX 609; Tr. 1418-1419; Doc. 3-7002, 3-7003).

146. The stockholder-licensee representatives at the meeting of the Executive Committee of Sealy, Inc. in January 1939, decided that on all future Sealy promotions a markup of 80 per cent (40 per cent on sales) must be maintained for the dealers (GX 610; Tr. 1420; Doc. 3-3138).

147. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in May 1939, decided that Sealy, Inc. would adopt a hair top mattress to be called "The Prize Winner" which would carry a comparative of $29.50 and would sell at $19.95. They further agreed upon and set a new minimum retail price on a particular Sealy mattress along with the plans for merchandising it (GX 611; Tr. 1422-1424; Doc. 3-3149 to 3-3152).

148. At the Sealy, Inc. stockholder-licensee meeting in May 1939, a change in policy with regard to Sealy's minimum resale prices was announced (GX 612; Tr. 1425-1426; Doc. 3-3167).

149. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc., in November 1939, decided that J. R. Haas, the Memphis stockholder- licensee, would prepare specifications for studio couches and bed divans for sale in suggested resale prices (GX 613; Tr. 1430; Doc. 3-3204).

[fol. 216] 150. The stockholder-licensee representatives, at the Sealy, Inc. Executive Committee meeting on April 26, 1940, unanimously agreed upon and set a new resale price for the Sealy Rest mattress (GX 615; Tr. 1434-1435; Doc. 3-1882).

151. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in April 1940, gave consent to the Sealy Mattress Company of Memphis to sell Sealy mattresses to Montgomery Ward & Company within its own area, provided such sales made by Montgomery Ward & Company were handled through normal retail outlets at the agreed upon and set standard Sealy retail prices (GX 616; Tr. 1436; Doc. 3-1887).

152. The stockholder-licensee representatives, at Sealy, Inc. Executive Committee meeting in February 1948, decided that two alternate names could be used by the Sealy stockholder-licensees for each of the regular resale mattresses subject to the provisions that:

(a) In no case could a Sealy item be advertised below $29.95;
(b) Under no circumstances was there to be any preticketing of the alternate name item by the stockholder-licensee; and
(c) Under no circumstances was the stockholder-licensee to allow a price comparative to be used by the retail advertisers.

They further agreed upon and set the suggested national resale price for the Cotton Boll innerspring mattresses (GX 619; Tr. 1443-1444; Doc. 3-1713 to 3-1715).

[fol. 217] 153. At the meeting of the Sealy, Inc. Executive Committee in May 1949, the president, E. H. Bergmann, who

was also the general manager of the Cleveland stockholder-licensee at that time, suggested a reduction in the minimum advertised retail price of Sealy merchandise. The committee agreed that the Sealy stockholder-licensees so desiring would be permitted to allow their dealers to advertise Sealy merchandise as low as $24.75 (GX 620; Tr. 1446-1447; Doc. 3-1805).

154. The stockholder-licensee representatives present at the Sealy, Inc. Executive Committee meeting in September 1949, adopted ticketing selections for the Sealy resale line and agreed upon and set the retail prices thereon (GX 621; Tr. 1448; Doc. 3-1817).

155. E. H. Bergmann, the president of Sealy, Inc., presented his thoughts concerning the establishment of a $39.50 rubber topper innerspring promotion to the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in November 1949. The directors after detailed discussion decided to submit the idea to the stockholder-licensees at the annual meeting which was to be held immediately following the meeting of the board of directors (GX 622; Tr. 1451; Doc. 3-1827).

156. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in December 1949, after a general discussion on the establishment of minimum [fol. 218] prices for Sealy sleep lounges, agreed upon and set the minimum resale price for Sealy sleep lounges (GX 623; Tr. 1453; Doc. 3-1832).

157. In August 1950, the stockholder-licensee representatives at a meeting of the Sealy, Inc. Executive Committee decided after some discussion that new specifications should be issued for various Sealy products. They further agreed upon and set the retail prices for various other Sealy products (GX 624; Tr. 1455-1456; Doc. 3-1851).

158. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in September and November 1950 discussed the resale prices of Sealy mattresses and box springs, and agreed upon and set the resale prices for nationally advertised Sealy products. They further agreed in September 1950 that the individual stockholder-licensees could decide whether or not to establish the resale prices prior to the effective date (GX 625-626; Tr. 1458-1461; Doc. 3-1856, 3-1863).

159. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in January 1951 discussed the resale prices of Sealy items and agreed upon and set the resale price on five Sealy products (GX 627; Tr. 1461-1463; Doc. 3-1653).

160. At the meeting of the Sealy, Inc. board of directors in September 1951, there was a general discussion of the national resale prices on Sealy mattresses and box springs. After various stockholder-licensee representatives gave [fol. 219] their manufacturing costs on each item and after analyzing such costs, the stockholder-licensee representatives decided not to recommend a reduction in resale prices (GX 628; Tr. 1468-1469; Doc. 3-1629).

161. In November 1951, the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting discussed the advisability of retaining the present reseale price of the Sealy Posturepedic Firm-O-Rest mattress. This matter was put to a vote by the stockholder-licensee representatives acting as the board of directors. After the vote, E. H. Bergmann, the then president, stated that inasmuch as the majority of the board of directors favored the retention of he $79.50 price it would be so ordered. At the Sealy, Inc. stockholder-licensee meeting on November 11, 1951, this decision was announced (GX 629-630; Tr. 1470, 1472; Doc. 3-1611, 3-1621).

162. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in August 1952, reviewed the comparative sales figures of Posturepedic mattresses for the first half of 1951 and 1952 and decided to maintain the existing resale price of the Posturepedic mattress. They further decided to have Mr. Bergmann prepare a resolution for submission to the board of directors which would make it mandatory that all resale prices for the Posturepedic be the same at all points upon notice from Sealy (GX 631; Tr. 1474-1476; Doc. 3-1591, 3-1592).

[fol. 220] 163. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting on September 18, 1952 adopted the following resolution:

> Whereas compliance by licensees on all specifications established by the board of directors is the essence of the protection afforded by the trade marks of Sealy,
> Now therefore, be it resolved that the failure by any

licensees to comply with each and every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, shall be deemed to be harmfully and injuriously damaging to the Sealy trademarks and to the products sold thereunder.

They further discussed the advisability of changing the resale price of the children's Posturepedic mattress and agreed that no change should be made. In October 1952, the resolution passed at this meeting was disseminated to the licensee-members through the issuance of Sealy Policy Bulletin No. 12, dated October 7, 1952, which also contained the listing of the then established resale prices (GX 632, 743; Tr. 1478-1479, 1723-1725; Doc. 3-701, 3-1584, 3-1585).

164. The stockholder-licensee representatives, acting as the board of directors of Sealy, Inc. in January 1953, agreed upon and set the resale prices for various Sealy products (GX 633; Tr. 1483; Doc. 3-1556).

165. At the meeting of the board of directors of Sealy, Inc. held March 19, 1953 in Los Angeles, California, E. H. [fol. 221] Bergmann brought up the possibility of increasing the ending price of the resale brackets from 50 cents to 75 cents. The stockholder-licensee representatives present expressed their opinion and after discussion agreed that no change should be attempted (GX 634; Tr. 1484-1485; Doc. 3-1551).

166. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in March 1953, discussed the establishment of the Baby Posturepedic resale price and decided that the Baby Posturepedic should bear a retail tag of $19.95 without the contour sheet and $24.75 with the contour sheet. The decision was changed in June 1953 when the stockholder-licensee representatives acting as the Sealy, Inc. board of directors, unanimously agreed that the Baby Posturepedic should be sold at $24.75 retail, regardless of the type of plastic cover used with the mattress (GX 634-635; Tr. 1485, 1487; Doc. 3-1540, 3-1551).

167. In November 1953, the stockholder-licensee representatives, acting as the board of directors of Sealy, Inc., agreed that the five resale Con-Sealy beds as shown at the

stockholder-licensee meeting should be adopted and agreed upon and set the retail prices thereon. They further agreed upon and set the minimum advertised prices of certain of these Sealy products (GX 636; Tr. 1488-1489; Doc. 3-1530).

168. At the meeting of the Sealy, Inc. board of directors on May 10, 1954, it was called to the attention of the [fol. 222] stockholder-licensee representatives that there was a 50 cents differential in the retail price of the Posturepedic innerspring mattress and foundation set as compared to the Foam Rubber Posturepedic set. The stockholder-licensee representatives recommended, for the sake of uniformity, that the price of the Posturepedic Foam Rubber set should be the same as the Posturepedic innerspring set. They further expressed their opposition to dropping the Sealy Rest name to a $59.50 level (GX 639; Tr. 1495; Doc. 3-1505, 3-1506).

169. The stockholder-licensee representatives at the Sealy, Inc. Executive Committee meeting on March 2, 1955, thoroughly reviewed the complete fair trade program as related to Sealy's national resale items. They decided that a definite fair trade program should be set up; that it should be submitted to the respective stockholder-licensees; and that the program would be sponsored by trade paper ads run by Sealy, Inc. They also reviewed the matter of minimum prices and agreed upon and set minimum prices for various Sealy products (GX 641; Tr. 1501-1502; Doc. 3-1458, 3-1459).

170. The stockholder-licensee representatives, acting as the Sealy, Inc. board of directors in April 1955, reviewed the prices set at the Executive Committee meeting in March 1955 and agreed on the minimum prices set by the Execu- [fol. 223] tive Committee with the addition that the minimum price on the Con-Sealy bed with the Posturepedic mattress should be established at $199.50 (GX 642; Tr. 1503-1504; Doc. 3-1440).

171. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in August 1955, approved the creation of a Firm-O-Rest foam outfit to sell for $129.50; approved the creation of a Foam Rubber Anniversary outfit with the price per set to be $99.50; and approved an increase of $10.00 for each of the resale Redi-

Bed and Con-Sealy beds (GX 643; Tr. 1507-1509; Doc. 3-1419, 3-1420).

172. At the Sealy, Inc. Executive Committee meeting in June 1956, the stockholder-licensee representatives adopted the following resolution:

> RESOLVED: That the general policy heretofore established by the Board of Directors, of limiting comparatives not to exceed one-third off, be abated for the 1957 Anniversary Program permitting promotion of a $69.50 item at a sale price of $44.50.

After a lengthy discussion as to whether or not this $44.50 price was sound, those present agreed that the price of $44.50 should be set (GX 646; Tr. 1516-1517; Doc. 3-1371).

173. In August 1956, the stockholder-licensee representatives, acting as the Sealy, Inc. board of directors, agreed that no price comparison should ever be used on the Posturepedic. They further agreed to maintain the existing resale [fol. 224] prices on Sealy mattresses and foundations (GX 647; Tr. 1519-1520; Doc. 3-1359, 3-1360).

174. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in January and February 1957 agreed upon and set the minimum prices on various Sealy products. They further agreed after discussion that 125 per cent of the invoiced wholesale price be the maximum markup allowed for pre-ticketed non-promotional items (GX 648; Tr. 1521; Doc. 3-1337).

175. From time to time the stockholder-licensee representatives served on the Advertising and Merchandising Committee of Sealy, Inc. and the Upholstery Committee of Sealy, Inc. These committees discussed and made recommendations as to (a) the retail prices to be set on Sealy products, (b) the minimum retail prices to be used on Sealy products, (c) the advertising and merchandising of those products, (d) the various promotions to be run on Sealy products and the retail prices to be in effect during those promotions, and (e) new products to be manufactured and promoted by the stockholder-licensees (GX 651, 653-656, 658-659, 664-665; Tr. 1532, 1539, 1542-1543, 1546-1547, 1551-1552, 1559-1562, 1564-1565, 1593, 1595-1596).

176. The minutes of the meeting of the Sales Managers Committee of Sealy, Inc. held May 3, 1956, attended by the stockholder-licensee representatives from Baltimore, Cleveland, Detroit, Des Moines, and Chicago, and two members of [fol. 225] the staff of Sealy, Inc., record (a) a suggestion that they lower the quality of their $39.95 mattress, raise the price of their $39.95 specifications to $44.50, advertise both in the ad, and they did not favor the idea; (b) they felt it was absolutely necessary to raise the retail price of the 1957 anniversary promotion to $44.50 or $44.95; (c) a suggestion that they take a $69.50 resale number, such as the Sealy Rest or Sleep Joy, and reduce it to $44.50; and (d) that the reduction referred to in (c) above would have to be approved by the board of directors before such a plan could be finalized (GX 657; Tr. 1554-1556; Doc. 3-6098, 3-6099).

177. A few days prior to February 13, 1953, Sealy, Inc. issued a bulletin to all the stockholder-licensees stating that the resale prices of the Sealy resale line would move from the 50 cent bracket to the 75 cent bracket. On February 13, 1953, Sealy, Inc. issued a bulletin to all stockholder-licensees countermanding this previous bulletin, as the stockholder-licensee representatives comprising the board of directors had not officially approved the change. This later bulletin stated that the only change in the Sealy resale line agreed upon by the stockholder-licensee representatives on the board of directors is the change in the Sleep Charm price (GX 666; Tr. 1598; Doc. 3-3581).

[fol. 226] 178. In August 1953, the Chicago stockholder-licensee informed Sealy, Inc. that the Chicago stockholder-licensee was agreeable to selling Gamble-Skogmo Company resale goods based on Gamble-Skogmo Company's agreement to maintain the resale prices on those resale goods (GX 668; Tr. 1599-1600; Doc. 3-3577).

179. In January 1954, the Waterbury stockholder-licensee wrote Sealy, Inc. that since the Waterbury stockholder-licensee had voted for the $199.50 minimum price on Con-Sealy beds, he was happy to receive the Sealy, Inc. bulletin stating that the resale price for the Con-Sealy beds had been set at $199.50. He went on to ask Sealy, Inc. if it were permissible to sell the love seat size Con-Sealy bed at $189.50, thereby maintaining his customary $10.00

differential between the full size and the love seat size as did his competitor Simmons. E. H. Bergmann, writing for Sealy, Inc., replied that Simmons recognized the $10.00 difference in the two sizes and he could "see no reason why we should not do the same also." Mr. Bergmann further stated that he felt the bulletins on minimum resale prices should be revised and he hoped within a short time to send a bulletin to the stockholder-licensee representatives comprising the Executive Committee and elicit their opinion as to the correct minimum prices on all items (GX 669-670; Tr. 1601-1604; Doc. 3-3526, 3-3527).

180. In February 1954, the Chicago stockholder-licensee wrote Mr. Bergmann, the president of Sealy, Inc., that he [fol. 227] had mailed a Sealy bulletin, "SP-2," to Roger Lawrence, the executive vice president of Sealy, Inc., but had requested Mr. Lawrence to delay the mailing of the bulletin to the stockholder-licensees until Mr. Bergmann could check with the Executive Committee to see if the $199.50 price for the full size Con-Sealy bed included the Sealy Posturepedic quality mattress because the Chicago stockholder-licensee felt quite certain that it was the consensus of opinion that the Posturepedic mattress be excluded at the $199.50 price. Mr. Bergmann replied (1) that he understood the stockholder-licensee representatives at the board of directors meeting on November 16 had agreed that the minimum price of the Con-Sealy bed was to be $179.50 with a Posturepedic mattress; (2) that a bulletin had been issued to the stockholder-licensee as to their desires of $179.50 or $199.50 and that the vote had been sixteen to three in favor of the $199.50 price; and (3) that he, Mr. Bergmann, would ask each stockholder-licensee member of the Executive Committee to write him as to his wishes and he would be governed by the majority (GX 671-672; Tr. 1605-1606; Doc. 3-3528, 3-3529).

181. In April 1954, E. H. Bergmann, president of Sealy, Inc., requested the Chicago stockholder-licensee to inform him, Bergmann, of his reaction to the difference of 50 cents (159.00 or $159.50) in the set price between the regular innerspring and foam rubber Posturepedic sets as Berg- [fol. 228] mann had already heard from three other stockholder-licensee members of the Executive Committee as to this question (GX 675; Tr. 1612; Doc. 3-3677).

182. In March 1955, the president of Sealy, Inc., Mr. Bergmann, wrote the Cleveland stockholder-licensee that by going back through the minutes of the board of directors meetings until January 1953, he had found that the stockholder-licensee representatives comprising the board of directors had ruled that the prices of the Baby Posturepedic mattress should be $24.95 including the plastic cover and without the cover it could be advertised at $5.00 less, or $19.95, and that they had further ruled that a price of $29.95 should be established for the Youth Posturepedic mattress (GX 679; Tr. 1619-1960; Doc. 3-3576).

183. In June 1955, Sealy, Inc. issued Sealy Bulletin No. 2, revised as of June 30, 1955, to all stockholder-licensees specifying the minimum price at which Sealy merchandise could be advertised at retail. In response to this bulletin, the Baltimore and Schenectady stockholder-licensees wrote Sealy, Inc. questioning the accuracy of the price of Hollywood sets. In August 1955, Mr. Bergmann, president of Sealy, Inc., wrote to five stockholder-licensees on the board of directors asking them to indicate the changes to be made in Sealy Bulletin No. 2. Bergmann stated that upon receipt of the information the bulletin would be revised according to the opinion of the majority. The stockholder-[fol. 229] licensee in Chicago, Mr. Kaplan, replied that it was his understanding that the twin or full size sets could be *sold* at not less than $49.50, that the minimum price was $59.50 if the headboard was included, and that if the headboard was advertised separately, the $49.50 minimum price was to be maintained. The stockholder-licensee in Waterbury, Mr. Walzer, replied that he believed the minimum price on a Hollywood outfit was $59.50 (GX 685-686, 688-690; Tr. 1629-1631, 1633-1635, 1637-1638; Doc. 3-3493 to 3-3495, 3-3499, 3-3500).

184. In May 1954, Mr. Bergmann, for Sealy, Inc., wrote the Kansas City stockholder-licensee that he had had the price of the Posturepedic foam rubber set under discussion with the Executive Committee of Sealy, Inc. which consisted of six stockholder-licensee representatives and they were exactly divided fifty-fifty, as to whether it should be $159.00 or $159.50 per set. Bergmann further stated that he would issue further ruling based on the vote of the stock-

holder-licensee representatives meeting as the full board of directors of Sealy, Inc. on May 10 (GX 691; Tr. 1640-1641; Doc. 3-3516).

185. In August 1955, E. H. Bergmann, the president of Sealy, Inc., wrote to the stockholder-licensee representatives on the board of directors eliciting their preferences on a new resale price for the Posturepedic foam rubber mattress in an effort to arrive at a quick decision. The ten [fol. 230] stockholder-licensees so polled, responded by letter or telegram giving preferences for resale prices. Sealy, Inc. issued Bulletin No. 114 dated August 16, 1955 to all Sealy licensee-members notifying them that the pole of the directors had indicated a large majority were desirous of increasing the retail price of the Posturepedic foam rubber set to $169.50, and requested the licensee-members to advise their dealers of the increase effective August 16, 1955 (GX 692-700, 702-704; Tr. 1641-1647, 1650-1664; Doc. 3-3481 to 3-3490, 3-3492).

186. In March 1956, the Baltimore stockholder-licensee wrote Mr. Bergmann at Sealy, Inc., that his sales of the Posturepedic foam rubber sets had decreased 70 per cent since the resale price was raised to $169.50. The Baltimore stockholder-licensee further stated that he hoped to see Baltimore and Sealy, Inc. do something about this just as soon as possible. Mr. Bergmann, president of Sealy, Inc., replied that further action could be considered when the matter became a little more clear (GX 705-706; Tr. 1665-1668; Doc. 3-3446, 3-3447).

187. In May 1956, the Chester stockholder-licensee wrote to E. H. Bergmann at Sealy, Inc. that there should be a quick reversion to the $159.50 resale price on the Posturepedic foam rubber mattress and that immediate remedial steps should be taken if it is deemed advisable by a majority of the licensee-members. Bergmann, for Sealy, Inc., replied that the stockholder-licensee representatives comprising the Executive Committee were unanimous in feel- [fol. 231] ing that it was not necessary at that time to reduce the $159.50 price (GX 707-708; Tr. 1669-1672; Doc. 3-3450, 3-3451).

188. In April 1955, the Rochester stockholder-licensee wrote Sealy, Inc. asking if a Sealy button free mattress

could be advertised at $39.50. Mr. Bergmann, president of Sealy, Inc., replied that it could be advertised at that price (GX 710-711; Tr. 1674-1675; Doc. 3-3474, 3-3475).

189. E. H. Bergmann, president of Sealy, Inc., in May 1956, congratulated the Detroit stockholder-licensee for the latter's general mailing to dealers in which the Detroit stockholder-licensee had listed regulations for Sealy approved retail advertising minimums. These regulations provided as follows:

(a) No innerspring mattress or box spring regardless of exterior finish may be advertised for less than $29.50;

(b) Full size or twin size Hollywood bed outfits (headboard, mattress, box spring or foundation, legs or carrying frames) may not be advertised at less than $59.50 for the complete set;

(c) Redi-Bed sleepers may not be advertised at less than $159.50;

(d) Con-Sealy bed sleepers may not be advertised at less than $199.50;

(e) All resale mattresses and dual sleepers, such as Con-Sealy beds, Posturepedic, Sunspun, Sealy Rest, [fol. 232] Firm-O-Rest, Good Homekeeper, and Sleep Charm, may never be advertised for less than the pre-ticketed price for any reason whatsoever;

(f) All other promotional merchandise carrying a maximum comparative not to exceed one third off the retail price;

(g) The word advertising as applied to the above regulations covers all display and classified linear newspaper advertising, circulars, radio, television, window and wall signs.

The Detroit stockholder-licensee further informed its dealers by a letter dated May 1, 1956 that he "will not be able to service dealers who do not conform to these retail advertising regulations" (GX 712-714; Tr. 1676-1683; Doc. 3-3471, 3-3472, 3-3652, 3-3653).

190. The Memphis stockholder-licensee in May 1956, wrote the Sealy, Inc. president, Mr. Bergmann, that he felt that "a minimum resale price of $39.95 each on a Sealy

mattress or box spring should be adhere to" and "on ensembles the minimum price should be $59.95" (GX 715; Tr. 1683-1684; Doc. 3-3654, 3-3655).

191. In August 1956, several stockholder-licensees wrote to Mr. Bergmann, president of Sealy, Inc., expressing their views in regard to the increase in resale prices made by Sealy's competitor Simmons, and their views as to whether Sealy, Inc. ought to raise or maintain the retail price of Sealy Posturepedic mattresses at $79.50. A meeting of [fol. 233] the stockholder-licensee representatives comprising the Executive Committee was called and the decision was reached that the $79.50 price of the Posturepedic mattress would be maintained. The Orlando licensee-member in October 1956 sent Sealy, Inc. a copy of its price list and a covering letter which had been mailed to its dealers. The accompanying letter dated October 15, 1956 and addressed to all Sealy dealers, stated that the Orlando licensee-member had concluded that the retail price lines could not be justifiably increased at that time and that he was maintaining the prevailing retail prices. The price list, effective October 15, 1956, specified the resale price of forty Sealy products. The prices on fourteen comparable Sealy products in this list were identical with the resale prices in the Baltimore and Richmond licensee-members' January 15, 1957 price list (GX 724, 726-730, 734-737; Tr. 1692, 1694-1698, 1702-1703, 1711-1716; Doc. 3-3467 to 3-3470, 3-3549, 3-3550).

192. In October 1956, the Schenectady member factory issued specifications for the 76th anniversary sale magazine advertising which stated that the Sealy Natural Rest would be featured and sold at a price of $39.95. In November 1956, Sealy, Inc. sent a "Smart Living Folder" to the licensee members which included a letter signed "Sealy Mattress Companies" to the Smart Living stores containing specifications for the same sale. These specifications [fol. 234] provided that the Sealy Natural Rest mattress could not be advertised or sold for less than $39.95. Also included in the folder was a letter signed "Sealy Mattress Companies," written by Gerald C. Shappell, to the Emerson Press submitting specifications for the mailing prices for the 76th anniversary sale, which provided that the

Sealy Natural Rest mattress and box spring would be nationally advertised for $39.95 but could not be advertised or *sold* for *less* than $39.95 (GX 731-733; Tr. 1704-1705, 1707-1709; Doc. 3-3537, 3-3544, 3-3545).

193. By stipulation at the present time, the stockholder-licensee representatives are continuing to meet as the board of directors, the Executive Committee, or other committees of Sealy, Inc. and discuss, agree upon and set

(a) The retail prices at which Sealy products could be sold;
(b) The retail prices at which Sealy products could be advertised;
(c) The comparative retail prices at which the stockholder-licensees and the Sealy retailers could advertise Sealy products;
(d) The minimum retail prices below which Sealy products could not be advertised;
(e) The minimum retail prices below which Sealy products could not be sold; and
(f) The means of inducing and enforcing retailers to adhere to these agreed upon and set prices.

[fol. 235] VI. Dissemination to Stockholder-Licensees of Sealy Board of Directors and Sealy Executive Committee Decisions.

194. E. H. Bergmann, president of Sealy, Inc., prepared and sent to all stockholder-licensee members Sealy Policy Bulletin No. 11, dated August 8, 1952, which informed them that the stockholder-licensee representatives constituting the board of directors had agreed that extra length bedding of 78 inchs and 82 inches, on all tufted resale mattresses from $49.50 through $79.50, including the Posturepedic mattress, all companion box springs and foundations, were to be *sold* for the same price as the regular length of 75 inches. This bulletin was revised and reissued in April 1955 (GX 742, 758; Tr. 1721-1722, 1750; Doc. 3-703).

195. In October, 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Sealy Policy Bulleting No. 7 to the licensee-members, which informed them that no price below $29.50 was authorized on any Sealy mattress and all trade-in sales were prohibited. This bulletin superseded previous

SP-7 bulletins of March, June, and December 1952, May 1954, and June 1955. In February 1953, Sealy, Inc. issued Revised Bulletin SP-14 to all licensee-members informing them that the stockholder-licensee representatives constituting the board of directors had changed, agreed upon and set the price of the Sleep Charm at $39.95 (GX 770, 772, 746; Tr. 1733, 1764-1765; Doc. 3-698, 3-715, 3-716).

[fol. 236] 196. In November 1954, Sealy Policy Bulletin No. 22 was issued to all licensee-members informing them of the various minimum prices at which their dealers could advertise Sealy merchandise and instructing them that all violations had to be called to the retail dealer's attention (GX 756; Tr. 1736-1737; Doc. 3-5523).

197. In January 1955, revised Sealy Policy Bulletin No. 4 was issued to all licensee-members. This bulletin stressed that if an item was pre-ticketed as to its value, the pre-ticketed price could not be reduced except upon specific directions of Sealy, Inc., nor could resale items in the national resale line be reduced in price at any time without the specific authority of Sealy, Inc. The bulletin then specified the resale price of eighteen different Sealy products in the national resale line and seven different products in the alternate resale line (GX 757; Tr. 1741-1745; Doc. 3-727, 3-728, 3-729).

198. In February 1957, Sealy, Inc. issued a revised Sealy Policy Bulletin No. 2 to all licensee-members on the subject of minimum retail prices, supplementing prior bulletins of January and February 1954, and April, May, June, and August 1955. This bulletin informed the members that the stockholder-licensee representatives acting as the board of directors had agreed upon and set the prices below which Sealy products could not be advertised or sold and the bulletin further listed the specific minimum prices for the [fol. 237] various Sealy products as approved by the stockholder-licensee representatives acting as the Executive Committee in January 1957 (GX 775; Tr. 1766-1768; Doc. 3-735, 3-736).

199. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Sealy Policy Bulletin No. 23 to all Sealy stockholder-licensees setting forth regulations controlling the sale of Con-Sealy beds, Redi beds, and Sealy resale beds and the minimum prices of these products. This

bulletin superseded prior SP-23 bulletins issued in November 1954 and May 1955 (GX 769; Tr. 1759-1762; Doc. 3-678, 3-681 to 3-683).

200. In June 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletin No. 62 to all stockholder-licensee members informing them of the specifications for the Smart Living Stores promotion and stressing the suggested resale prices to be in effect. The bulletin also lists in excess of 118 associated stores, by name and address, in seventeen different States which were to participate in the promotion (GX 779; Tr. 1776-1777; Doc. 3-860 to 3-868).

201. In August 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Bulletin No. 65 to all licensee-members informing them that the stockholder-licensee representatives serving as the Advertising and Merchandising Committee had agreed upon and set the suggested resale prices for Sealy king size sets and the prices so agreed upon and set (GX 780; Tr. 1777-1778; Doc. 3-871).

[fol. 238] 202. Sealy, Inc., over the signature of E. H. Bergmann, issued to all licensee-members Bulletin No. 67, dated August 23, 1956, on the subject of "Price Position" and solicited from the licensee-members any suggestions and observations on the subject of price which they might have had (GX 781; Tr. 1779-1780; Doc. 3-874).

203. Sealy, Inc. issued Bulletin No. 69 in August 1956, over the signature of E. H. Bergmann, on the subject of "Price Position" which informed all the licensee-members to whom it was sent that it was the unanimous opinion of the stockholder-licensee representatives comprising the board of directors that the resale prices should not be increased, and that a letter to the trade announcing the maintenance of the then present retail prices was being prepared (GX 782; Tr. 1780; Doc. 3-876).

204. Sealy, Inc. issued Bulletin No. 78 in September 1956, over the signature of E. H. Bergmann, which stated that M. A. Kaplan had been requested to compose a letter which could be sent by all licensee-members to active and prospective retail dealers regarding Sealy's decision to maintain then current resale prices. Attached to the bulletin was a copy of the letter composed by M. A. Kaplan, which Mr. Bergmann suggested should be dispatched from all

licensee-members to all active and prospective dealers. The letter addressed to all Sealy dealers stated that retail prices could not be justifiably increased at the present time, and therefore Sealy was maintaining resale prices (GX 783; Tr. 1781-1784; Doc. 3-887, 3-888).

[fol. 239] 205. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletins No. 79 and ADV 109, entitled "Regulatory Decisions by Board of Directors, August 28, 1956," and which stated the decision by the stockholder-licensee representatives acting as the board of directors that a price comparison of $79.50 must never be used in promotional advertising (GX 784, 804; Tr. 1784-1785, 1800; Doc. 3-889, 3-1109).

206. From time to time Sealy, Inc. has issued specifications containing pre-ticketed resale prices and names for various Sealy products. These specifications have been approved by the stockholder-licensee representatives acting as the board of directors (GX 786-789, 791-793, 795-796; Tr. 1786-1792; Doc. 3-2900, 3-2953, 3-2965, 3-2967, 3-2969, 3-2970, 3-2979, 3-2986, 3-2991, 3-2992).

207. In September 1952, the stockholder-licensee representatives acting as the board of directors decided that the failure of any licensee to comply with every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, would be deemed to be harmfully and injuriously damaging to the Sealy name. This action brought the failure to comply with the minimum resale prices under the "manufacturer's contract" clause which allowed the stockholder-licensee representatives acting as the board of directors to terminate the contract with the stockholder-licensees for [fol. 240] pursuing any course of action in the selling of Sealy products which would be detrimental or injurious to Sealy (Article IV, 13 of contract, GX 1098). This decision was disseminated to the licensee-members in Sealy Policy Bulletin No. 12, dated October 7, 1952, which also stressed the resale prices then established (GX 632, 743; Tr. 1723-1725, 1478-1479; Doc. 3-701, 3-1584).

208. Sealy, Inc. issued four specifications in February 1957 for Sealy products, each bearing a specified label containing a specific name and retail price (GX 798-801; Tr. 1795-1796; Doc. 3-2924 to 3-2927).

209. In April 1956, Sealy, Inc. issued Bulletin ADV. No. 42 to all licensee-members making available to them promotional ads, mats, and specifications for four promotions and specifying suggested retail prices for six Sealy products (GX 803; Tr. 1799-1800; Doc. 3-1008 to 3-1010).

210. Sealy, Inc. in November 1956 issued its Bulletin ADV. No. 127 to all licensee-members enclosing proofs of advertising mats for Sealy's 76th anniversary sale last chance ads. Each of four mats contained the $59.50 price effective after March 16, the 76th anniversary sale price as $39.95, the savings of $19.55 if the Sealy Natural Rest mattress was purchased during the sale, and a pre-ticketed price of $59.50 after March 16 (GX 805; Tr. 1800-1802; Doc. 3-1132 to 3-1133A).

[fol. 241] 211. In December 1956, Sealy, Inc. issued its Bulletin ADV. No. 137 containing specifications and photostats of ads for the licensees promotional manuals. The specifications show retail prices for Sealy products. The ads show the name of the retail store and the price of $44.95 for the 837 coil mattress (GX 806; Tr. 1803-1805; Doc 3-1147 to 3-1151).

212. Sealy, Inc. issued a manual for the licensee meeting to be held January 14, 1956 concerning the 1956 Posturepedic campaign, which contained the agreed upon and set retail price for the Posturepedic innerspring mattress (GX 807; Tr. 1806- 1807; Doc. 3-3599 to 3-3649).

VII. Policing of and Enforcement of the Agreed Upon and Set Retail Prices by Sealy, Inc.

213. In October, 1951, E. H. Bergmann writing for Sealy, Inc., wrote to the Brooklyn licensee-member that one of his retailers had advertised a Sealy product below the permissible minimum price, and that he, Bergmann, must have written assurance from both the Brooklyn licensee-member and the retailer that such an ad would never occur again. Bergmann further stated that if the requested assurances were not received he would bring the Brooklyn licensee-member's contract before the board of trustees for cancella-
[fol. 242] tion. Copies of this letter also were sent to other stockholder-licensees (GX 809; Tr. 801, 1814-1815; Doc. 3-3854, 3-3854A).

214. In November 1951, J. R. Lawrence for Sealy, Inc. wrote the Memphis licensee-member concerning an ad run by a dealer in Chattanooga which offered a Sealy product at a compared price, and instructed the Memphis licensee-member to bring the matter to the attention of the proper party so there would be no repetition of such an ad in the future (GX 810; Tr. 1816-1817; Doc. 3-3905).

215. In February 1952, E. H. Bergmann for Sealy, Inc. wrote directly to a retailer in Wichita, Kansas, that one of the retailer's ads which featured a $79.50 Sealy Posturepedic mattress for $39.75 had been brought to Sealy, Inc.'s attention and that such an ad was in violation of Sealy, Inc.'s rules. Bergmann further stated that all of Sealy, Inc.'s time and energy and every dollar it could spare was spent to establish the resale prices of Sealy merchandise so that dealers would not be subject to the vicissitudes of price cutting, and requested the retailer to refrain from any further price reductions on any regular preticketed resale Sealy item (GX 811; Tr. 1818-1820; Doc. 3-3966).

216. E. H. Bergmann for Sealy, Inc. in February 1952 and February 1953 wrote the Los Angeles stockholder-licensee that the Los Angeles stockholder-licensee's retailers had advertised Sealy headboard ensembles below [fol. 243] the agreed upon and set minimum price (GX 812, 818; Tr. 1820-1822, 1830-1831; Doc. 3-3906, 3-3906A, 3-4049).

217. In October 1952, J. R. Lawrence for Sealy, Inc. wrote a retailer in Ohio concerning one of the retailer's ads which violated Sealy, Inc.'s resale policy and requested and solicited the cooperation of the store in preventing a reoccurrence. Lawrence further asked the retailer for written assurance that he would be guided by Sealy, Inc.'s policy on resale merchandise in the future and that, if the retailer wished to run a comparative price on Sealy merchandise, to work out an agreement with the Cleveland licensee-member for merchandise other than Sealy's regular resale line (GX 814; Tr. 1825-1826; Doc. 3-4227).

218. In December 1952, Sealy, Inc. by E. H. Bergmann wrote to the Reading licensee-member concerning an ad by a retailer making an allowance of $20.00 for an old mattress on a trade-in sale, and requested the Reading licensee-

member to call it to the attention of the retailer and tell the retailer not to use any type of trade-in ads on Sealy merchandise (GX 815; Tr. 1826-1827; Doc. 3-4052).

219. In February 1953, the Cleveland stockholder-licensee wrote to Sealy, Inc. that certain retailers in Wheeling, West Virginia, and Youngstown, Ohio, who were retailers of the Pittsburgh stockholder-licensee, had adver- [fol. 244] tised the Sealy Posturepedic mattress with a $5.00 trade-in allowance, and that some of the Cleveland stockholder-licensee's dealers were disturbed about it. E. H. Bergmann, president of Sealy, Inc., telephoned the Pittsburgh stockholder-licensee who in turn contacted the retailers involved and wrote Sealy, Inc. that the retailers denied doing such advertising (GX 816-817; Tr. 1828-1830; Doc. 3-3982, 3-3983).

220. In April 1953, the Brooklyn stockholder-licensee sent Sealy, Inc. an ad run by a retailer of the Memphis stockholder-licensee featuring a Sealy Smooth sleep mattress at a compared price in violation of Sealy, Inc.'s regulations. Mr. Bergmann for Sealy, Inc. wrote the Memphis stockholder-licensee and requested him to see if Sealy, Inc. and the Memphis stockholder-licensee could halt this type of handling of Sealy merchandise. The Memphis stockholder-licensee thereupon wrote the retailer and informed him that the ad was a violation of Sealy's retail advertising policy and ads of that type must not be run in the future, the particular mattress must be offered at its set resale price, and all selling must be done at the preticketed price (GX 819-821; Tr. 1832-1836; Doc. 3-4231, 3-4232).

221. In June 1953, the Cleveland stockholder-licensee sent Sealy, Inc. an ad run by a retailer which showed a Sealy Posturepedic mattress at a cut price and requested Sealy, Inc. to write the retailer its usual firm letter even though [fol. 245] the retailer was not a dealer of the Cleveland stockholder-licensee (GX 822; Tr. 1837-1838; Doc. 3-4235).

222. In July 1953, E. H. Bergmann for Sealy, Inc. wrote the Paterson licensee-member concerning an ad run by one of the Paterson licensee-member's retailers which violated Sealy, Inc.'s advertising policy and further stated that although the president of Sealy, Inc, had the right to reject any ads that are inconsistent with policy for credit

on the advertising program, Bergmann would allow the ad to go in for credit, but asked the Paterson licensee-member to watch his accounts and see that they do not run ads inconsistent with Sealy, Inc. policy (GX 823; Tr. 1838-1839; Doc. 3-4233).

223. In August 1953, Sealy, Inc. wrote the Fort Worth licensee-member concerning an advertisement run by one of the Fort Worth licensee-member's retailers which violated practically all the rules of Sealy's comparative price policy by "breaking" the price on the Sealy Posturepedic mattress and advertising a Sealy product below the agreed upon and set minimum price, and requested the Fort Worth licensee-member to write Sealy, Inc. concerning the matter (GX 824; Tr. 1839-1840; Doc. 3-4233).

224. E. H. Bergmann writing for Sealy, Inc. requested the Pittsburgh stockholder-licensee in December 1953, to [fol. 246] protest to one of his retailers because an ad run by the retailer on a Sealy product violated the Sealy comparative policy by advertising the mattress as a regular $59.50 mattress for $39.95 and contained a "save twenty dollars statement" two weeks before the announcement of Sealy's national anniversary promotion (GX 825; Tr. 1841-1842; Doc. 3-4164).

225. In April 1954, E. H. Bergmann, president of Sealy, Inc., wrote the Kansas City licensee-member concerning an advertisement run by one of the Kansas City licensee-member's retailers which showed Sealy products below the agreed upon and set minimum retail price. Mr. Bergmann stressed the point that "Sealy *cannot* and *will not* tolerate such violations in the future," and threatened to put the Kansas City licensee-member on probation if any further infractions occurred from the time of such infractions to the end of the licensee agreement. Copies of the letter also were sent to licensee-members in Memphis, Louisville, Chicago, Des Moines, Denver, Houston, and Forth Worth. Subsequently, the Kansas City licensee-member wrote Mr. Bergmann that he had written every key account in his area urging them not to run any advertising on Sealy merchandise, other than those set up through Sealy's mat service, without obtaining a careful double check by the Kansas City sales representative, in order to reduce the possibility of running ads that may contain violations of

Sealy, Inc.'s policy, and enclosed a copy of that letter [fol. 247] (GX 826, 829-830; Tr. 1842-1846, 1851-1856; Doc. 3-3729, 3-3730, 3-3733 to 3-3735).

226. The Cleveland stockholder-licensee in May 1954 notified one of his retailers that an ad run by the retailer constituted an extremely serious violation of Sealy advertising policy by advertising a Sealy product after the end of the permissible promotion period. That letter, a copy of which was sent to Sealy, Inc. and the Detroit stockholder-licensee, further stated:

> The second violation is that the anniversary and Golden Sleep *may not be sold* or advertised for less than $39.95, whereas your ad showed this merchandise at $37.88. *These policies are established not by our factory, but by Sealy nationally* and, therefore, there are national repercussions when such ads are run. [Emphasis supplied]

and requested the retailer to assure the Cleveland stockholder-licensee in writing that these Sealy products would not be advertised out of season, nor advertised or sold for less than the specified minimum (GX 833; Tr. 1859-1861; Doc. 3-4135, 3-4136).

227. In May 1954, Mr. Bergmann writing for Sealy, Inc. informed the Baltimore licensee-member that one of the Baltimore licensee-member's retailers had violated Sealy, Inc.'s advertising policies. The Baltimore licensee-member thereupon wrote the retailer that his advertisement was inconsistent with Sealy policy. A copy of this letter was [fol. 248] then forwarded by the Baltimore licensee-member to Mr. Bergmann at Sealy, Inc. who in turn complimented the Baltimore licensee-member on this letter and stated "*This is just the type of policing that we should do in combination of the national and local offices* in cementing the retailers' minds to our advertising rules" (emphasis supplied) (GX 834-835; Tr. 1861-1865; Doc. 3-4160, 3-4161).

228. In July 1954, E. H. Bergmann, president of Sealy, Inc., wrote to the Louisville licensee-member and in August 1954 wrote the Chicago licensee-member about extracting a promise from a retailer in both licensee-members' territories not to advertise any Sealy mattress for less than $39.95 during the periods of Sealy, Inc's anniversary and

Golden Sleep promotions and requested the licensee-members to arrange this agreement with the retailer (GX 676-677; Tr. 1612-1615; Doc. 3-3674, 3-3675).

229. In July 1954, J. R. Lawrence writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had advertised a Sealy product in a manner that violated Sealy, Inc.'s schedule on price comparisons and, further, that the Cleveland stockholder-licensee should take it up with the retailer and see that Sealy, Inc.'s policy on the retail advertising of Sealy merchandise was followed in the future (GX 836; Tr. 1865-1866; Doc. 3-4230).

[fol. 249] 230. In July 1954, J. R. Lawrence, executive vice president of Sealy, Inc., wrote the Baltimore licensee-member that one of the Baltimore licensee-member's retailers in Washington, D. C. had advertised a Sealy product below the agreed upon and set minimum retail price (GX 837; Tr. 1866-1867; Doc. 3-3877).

231. In September 1954, E. H. Bergmann, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had violated Sealy, Inc.'s policies by advertising Sealy products below the agreed upon and set minimum retail price, and requested the Cleveland stockholder-licensee to dispatch a letter to the retailer immediately, which letter would remind the retailer of Sealy, Inc.'s minimum retail price regulations and at the same time ask the retailer to confirm compliance with these regulations in future ads. Bergmann further requested the Cleveland stockholder-licensee to furnish Sealy, Inc. with a copy of his letter to the retailer (GX 838; Tr. 1868-1869; Doc. 3-4137).

232. In September 1954, J. R. Lawrence, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that an organizatin calling itself Club Sales Merchandise Plan was circulating a catalog showing Sealy products below the agreed upon and set retail prices for these products and requested the Cleveland stockholder-licensee to help Sealy, Inc. trace down the source of these Sealy products (GX 839; Tr. 1869-1871; Doc. 3-4229).

[fol. 250] 233. E. H. Bergmann, president of Sealy, Inc., in September 1954 wrote the Chicago stockholder-licensee

that one of the Chicago stockholder-licensee's retailers, Marshal Field & Company, had advertised Sealy products below the agreed upon and set minimum retail price and suggested that the Chicago stockholder-licensee inform the retailer to maintain the minimum retail price in the future (GX 840; Tr. 1872-1873; Doc. 3-4140).

234. Sealy, Inc., under the signature of E. H. Bergmann, wrote the St. Paul licensee-member in November 1954 about the St. Paul licensee-member permitting Sealy products with price tabs indicating retail prices to be sold and advertised at other than the retail tab price and instructed the St. Paul licensee-member to inform his sales manager and the retailers involved "that *there is a basic principal in Sealy of advertising and merchandising to the effect that if an article is pre-ticketed, it cannot be reduced in any manner, shape, or form*" (emphasis supplied) (GX 842; Tr. 1875-1876; Doc. 3-3779).

235. In January 1955, the Waterbury stockholder-licensee reported to Sealy, Inc. that a retailer of the Brooklyn stockholder-licensee had run an advertisement, which showed Sealy products below the agreed upon and set minimum retail price, enclosing a copy of the advertisement and expressed the certainty that Sealy, Inc. was doing all it could to correct the situation (GX 844; Tr. 1878-1880; Doc. 3-4145).

[fol. 251] 236. In February 1955, E. H. Bergmann for Sealy, Inc., had the Waterbury stockholder-licensee purchase a mattress from a discount house, which had listed a Sealy Posturepedic mattress below the agreed upon and set price, to ascertain the source of the discount house's supply of Sealy products. This source was thereby traced to the Brooklyn licensee-member (GX 845; Tr. 1880-1881; Doc. 3-4144).

237. E. H. Bergmann, writing for Sealy, Inc. in February 1955, informed the Richmond stockholder-licensee that a retailer of the Richmond stockholder-licensee had cut the price on the Sealy Anniversary mattress and further stated that "in the serious violations of our policies by retail dealers that this office [Sealy, Inc.] must take recognition of such violations" and "that this firm must be told that if there be a further violation of this nature that the national office [Sealy, Inc.] will take a position that the

account must be denied any further Sealy merchandise." The Richmond stockholder-licensee thereupon wrote to the retailer about the violation and quoted the above statements from Mr. Bergmann's letter. After writing to the retailer, the Richmond stockholder-licensee replied to Bergmann, that he felt that Bergmann's solution to the situation was correct. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Richmond stockholder-licensee that he should not sell the tabloid circular on a forthcoming Posturepedic event to this retailer but, if the Richmond stockholder- [fol. 252] licensee felt he wanted to sell this to the retailer, then it was necessary for the Richmond stockholder-licensee to obtain a letter from the retailer stating definitely that the retailer would not reduce any price in the circular. Bergman further stated if the retailer reduced any prices in the circular it would create chaos in that portion of Virginia and Washington, D.C., which is handled by the Baltimore licensee-member, and stressed that "Under no circumstances must *we* have a reoccurrence of this dealer violating *our* rules" (emphasis supplied) (GX 846-848; Tr. 1882-1886; Doc. 3-4157 to 3-4159).

238. E. H. Bergmann, president of Sealy, Inc., in February 1955, wrote the St. Paul licensee-member concerning an advertisement by one of the St. Paul licensee-member's retailers which showed Sealy products at reduced prices in violation of Sealy, Inc.'s advertising policies, and stated that Sealy, Inc. prohibited the reduction of any pre-ticketed Sealy product and that such ads could not be tolerated since they created chaos for the St. Paul licensee-member's other retailers and the retailers of contiguous Sealy plants. Bergmann further stated that, if the dealer persisted in running ads that were inconsistent to Sealy's established policy of advertising and merchandising, Sealy, Inc. would not hesitate to tell the St. Paul licensee-member to which accounts he could or could not sell Sealy merchandise and instructed [fol. 253] the St. Paul licensee-member to advise his retailer of the seriousness of these violations of Sealy, Inc.'s retail advertising policy (GX 849; Tr. 1889-1891; Doc. 3-3777, 3-3778).

239. In March 1955, C. B. McGillivray, sales manager of the Chicago stockholder-licensee, wrote one of the Chicago stockholder-licensee's retailers, with a copy to Mr. Berg-

mann of Sealy, Inc. concerning an ad which the retailer had run which showed a Sealy mattress below the agreed upon and set minimum retail price and thereby violated Sealy, Inc.'s retail advertising regulations. The retailer's general manager agreed to run a retraction of the advertisement and gave the Chicago stockholder-licensee permission to use a copy of the retraction to reverify the Sealy, Inc. policy with other Chicago dealers who advertised and featured Sealy mattresses (GX 674; Tr. 1610-1611; Doc. 3-3673).

240. E. H. Bergmann of Sealy, Inc. in March 1955 wrote to the Cleveland stockholder-licensee that he had received a copy of an ad run by a retailer of the Cleveland stockholder-licensee which violated Sealy, Inc.'s retail advertising rules, and requested the Cleveland stockholder-licensee to take steps to correct it and write a letter to the retailer admonishing him not to advertise a Sealy mattress in a manner which would violate Sealy, Inc.'s retail advertising regulations and to send a copy of this letter to Sealy, Inc. (GX 851; Tr. 1893-1894; Doc. 3-4228).

[fol. 254] 241. E. H. Bergmann for Sealy, Inc. in March 1955, wrote the Chicago stockholder-licensee about an advertisement by one of the Chicago stockholder-licensee's retailers which showed a Sealy product below the agreed upon and set retail price as covered by a Sealy policy bulletin and requested the Chicago stockholder-licensee to verify the correctness of the advertisement and the correctness of the price restriction. The Chicago stockholder-licensee replied that he thought that Sealy should not object to the advertisement. Thereafter, Sealy, Inc. informed the Chicago stockholder-licensee that the ad was definitely a violation of the Sealy policy (GX 680-682; Tr. 1620-1625; Doc. 3-3667 to 3-3669).

242. In April 1955, E. H. Bergmann for Sealy, Inc., wrote the Allston licensee-member concerning an advertisement run by a retailer of Allston licensee-member which Bergmann had received and which violated Sealy, Inc.'s retail advertising policy, and informed the Allston licensee-member that Allston had violated the rules by permitting such an ad to be run and that "there must not be any repeats of this type of handling" (GX 852; Tr. 1894-1895; Doc. 3-4231).

243. In April 1955, the Louisville licensee-member wrote Sealy, Inc. that he had been approached by a firm which wanted to purchase Sealy products from the Louisville licensee-member. This firm had previously shown Sealy [fol. 255] products below the agreed upon and set retail prices and was located at the same address at which a discount house was operated. The Louisville licensee-member further informed Sealy, Inc. that he had refused to sell this firm and had been informed by that firm that it could buy Sealy products from a Chicago outlet and requested Sealy, Inc. to check with the Chicago outlet and find out why it had sold to the retail firm in Louisville. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Chicago outlet stating that (a) the Louisville firm previously had shown Sealy products below the agreed upon and set retail prices; (b) the Louisville firm upon being refused Sealy products by the Louisville licensee-member had told the Louisville licensee-member he could get Sealy products from the Chicago outlet; (c) Sealy, Inc. could not and would not sell any type of firm which did not maintain Sealy, Inc.'s retail prices; and (d) Sealy, Inc. definitely did not want the Louisville firm to have any Sealy merchandise (GX 854-855; Tr. 1897-1900; Doc. 3-4146, 3-4147).

244. In May 1955, the Chester licensee-member, at the request of one of his retailers, wrote Sealy, Inc. requesting permission to allow the retailer to promote a Sealy product in conjunction with a trade-in allowance during a week-long promotion by merchants in Atlantic City where the retailer was located. E. H. Bergmann for Sealy, Inc. denied this request, stating that Sealy, Inc. could not grant an ex-[fol. 256] ception to the rule in Sealy policy bulletins which restricted trade-in sales (GX 683-684; Tr. 1626-1628; Doc. 3-3501, 3-3502).

245. In June 1955, the Chicago stockholder-licensee wrote to one of his dealers concerning an ad run by the dealer which violated Sealy's retail advertising policy in showing Sealy products below the set minimum retail selling price and requested the dealer to inform its advertising department of the violations so there would be no repetition of such policy violations in the Chicago area.

A retrial would be especially insupportable here in light of the fact that the United States previously called in question the territorial restrictions of Sealy's license contracts through a Federal Trade Commission proceeding.[88] After full hearings, the Commission in 1948 held that the evidence failed to support the allegations of the complaint, and dismissed the proceeding.[89] The present record shows

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[88] The FTC Complaint, filed March 18, 1944, like the present Complaint, charged Sealy and its licensees with maintaining an unlawful combination and conspiracy to "restrain and prevent competition in the manufacture, sale, and distribution of Sealy products," in part as follows:

> "Pursuant to . . . said combination, conspiracy and agreed and planned common course of action, respondent Sealy, Inc., and respondent members of the Sealy group, agreed . . . among themselves that each of the . . . members of the Sealy group should enter into . . . an agreement and contract with . . . Sealy, Inc. . . . [which] provided:
>
> "(a) That . . . Sealy, Inc., shall allot to the contracting . . . member of the Sealy group an exclusive territory within which such member is confined for the manufacture, sale, and distribution of products manufactured under the terms and conditions of said contract, . . ." Sealy, Inc., 45 F.T.C. 730, 733 (1948).

[89] In its order dismissing the Complaint, the FTC made the following statements:

> "Ten of the manufacturing respondents herein are stockholders in and, in the aggregate, own more than three-fourths of the shares of stock of Sealy, Inc., now outstanding, and they and the 13 other manufacturing respondents have contractual relations with Sealy, Inc., but are each otherwise separately and independently engaged in the manufacture and sale of bedding products. . . .
>
> "Having considered the allegations of the complaint in the light of the evidence of record, and being of the opinion that the allegations respecting restraint of trade have not been sustained by the greater weight of the evidence, . . ." Sealy, Inc., *supra* note 88, at 735.

that Sealy has continued with the same structure and purposes. The Government has shown no change of circumstances, and indeed does not even claim injury to retailers or consumers by reason of Sealy's licenses, or diminution in the vigor of competition or the strength of either the smaller local and regional companies, or the large national companies, against which the Sealy licensees compete.

CONCLUSION

For the reasons set forth above, the judgment below should be affirmed.

Respectfully submitted,

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Table of Transcript Pages (Unprinted) on which Exhibits Cited Were Offered and Received
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SUPREME COURT OF THE UNITED STATES

No. 9.—October Term, 1966.

United States, Appellant, *v.* Sealy, Inc.	On Appeal From the United States District Court for the Northern District of Illinois.

[June 12, 1967.]

Mr. Justice Fortas delivered the opinion of the Court.

Respondent and its predecessors have, for more than 40 years, been engaged in the business of licensing manufacturers of mattresses and bedding products to make and sell such products under the Sealy name and trademarks. In this civil action the United States charged that respondent had violated § 1 of the Sherman Act by conspiring with its licensees to fix the prices at which the retail customers of the licensees might resell bedding products bearing the Sealy name, and to allocate mutually exclusive territories among such manufacturer-licensees.

After trial, the District Court found that the defendant was engaged in a continuing conspiracy with its manufacturer-licensees to agree upon and fix minimum retail prices on Sealy products and to police the prices so fixed. It enjoined the defendant from such conduct, "Provided, however, that nothing herein contained shall be construed to prohibit the defendant from disseminating and using suggested retail prices for the purpose of national advertising of Sealy products." Appellee did not appeal the finding or order relating to price-fixing.

With respect to the charge that appellee conspired to allocate mutually exclusive territory among its manufacturers, the District Court held that the United States had not proved conduct "in unreasonable restraint of

trade in violation of Section 1 of the Sherman Act." The United States appealed under § 2 of the Expediting Act. 15 U. S. C. § 29. We noted probable jurisdiction. 382 U. S. 806 (1965).

There is no dispute that exclusive territories were allotted to the manufacturer-licensees. Sealy agreed with each licensee not to license any other person to manufacturer or sell in the designated area; and the licensee agreed not to manufacture or sell "Sealy products" outside the designated area. A manufacturer could make and sell his private label products anywhere he might choose.

Because this Court has distinguished between horizontal and vertical territorial limitations for purposes of the impact of the Sherman Act, it is first necessary to determine whether the territorial arrangements here are to be treated as the creature of the licensor, Sealy, or as the product of a horizontal arrangement among the licensees. *White Motor Co.* v. *United States*, 372 U. S. 253 (1963).

If we look at substance rather than form, there is little room for debate. These must be classified as horizontal restraints. Compare *United States* v. *General Motors*, 384 U. S. 127, 141–148 (1966); *id.*, at 148–149 (HARLAN, J., concurring); *United States* v. *Parke, Davis & Co.*, 362 U. S. 29 (1960).

There are about 30 Sealy "licensees." They own substantially all of its stock.[1] Sealy's bylaws provide that each director must be a stockholder or a stockholder-licensee's nominee. Sealy's business is managed and controlled by its board of directors. Between board meetings, the executive committee acts. It is composed of Sealy's president and five board members, all licensee-

[1] A nonlicensee, Bergmann, who was Sealy's president in the 1950's, owns some of the remaining stock; stockholders have preemptive rights.

stockholders. Control not only resides in the licensees as a matter of form. It is exercised by them in the day-to-day business of the company including the grant, assignment, reassignment, and termination of exclusive-territorial licensees. Action of this sort is taken either by the board of directors or the executive committee of Sealy, both of which, as we have said, are manned, wholly or almost entirely, by licensee-stockholders.

Appellee argues that "there is no evidence that Sealy is a mere creature or instrumentality of its stockholders." In support of this proposition, it stoutly asserts that "the stockholders and directors wore a 'Sealy hat' when they were acting on behalf of Sealy." But the obvious and inescapable facts are that Sealy was a joint venture, of, by, and for its stockholder-licensees; and the stockholder-licensees are themselves directly, without even the semblance of insulation, in charge of Sealy's operations.

For example, some of the crucial findings of the District Court describe actions as having been taken by "stockholder representatives" acting as the board or a committee.

It is true that each licensee had an interest in Sealy's effectiveness and efficiency, and as stockholders, they welcomed its profitability—at any rate within the limits set by their willingness as licensees to pay royalties to the joint venture. But that does not determine whether they as licensees are chargeable with action in the name of Sealy. We seek the central substance of the situation, not its periphery;[2] and in this pursuit, we are moved by the identity of the persons who act, rather than the label of their hats. The arrangements for

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[2] Cf., *e. g.*, *Timken Roller Bearing* v. *United States*, 341 U. S. 593 (1951); *United States* v. *General Motors*, 384 U. S. 127 (1966); *United States* v. *New Wrinkle, Inc.*, 342 U. S. 371 (1952); *United States* v. *American Tobacco Co.*, 221 U. S. 106 (1911).

exclusive territories are necessarily chargeable to the licensees of appellee whose interests such arrangements were supposed to promote and who, through select members, guaranteed or withheld, and had the power to terminate, licenses for inadequate performance. The territorial arrangements must be regarded as the creature of horizontal action by the licensees. It would violate reality to treat them as equivalent to territorial limitations imposed by a manufacturer upon independent dealers as incident to the sale of a trade-marked product. Sealy, Inc., is an instrumentality of the licenses for purposes of the horizontal territorial allocation. It is not the principal.

Accordingly, this case is to be distinguished from *White Motor Co.* v. *United States, supra,* which involved a vertical territorial limitation. In that case, this Court pointed out that vertical restraints were not embraced within the condemnation of horizontal territorial limitations in *Timken Roller Bearing Co.* v. *United States,* 341 U. S. 593 (1951), and, prior to trial on summary judgment proceedings, the Court declined to extend *Timken* "to a *vertical* arrangement by one manufacturer restricting the territory of his distributors or dealers." 372 U. S., at 261.

Timken involved agreements between United States, British, and French companies for territorial division among themselves of world markets for antifriction bearings. The agreements included fixing prices on the products of one company sold in the territory of the others; restricting imports to and exports from the United States; and excluding outside competition. This Court held that the "aggregation of trade restraints such as those existing in this case are illegal under the [Sherman] Act." 341 U. S., at 598.

In the present case, we are also faced with an "aggregation of trade restraints." Since the early days of the

company in 1925 and continuously thereafter, the prices to be charged by retailers to whom the licensee-stockholders of Sealy sold their products have been fixed and policed by the licensee-stockholders directly, by Sealy itself, and by collaboration between them. As the District Court found:

> "the stockholder-licensee representatives . . . as the board of directors, the Executive Committee, or other committees of Sealy, Inc. . . . discuss, agree upon and set
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> "(a) The retail prices at which Sealy products could be sold;
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> "(b) The retail prices at which Sealy products could be advertised;
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> "(c) The comparative retail prices at which the stockholder-licensees and the Sealy retailers could advertise Sealy products;
>
> "(d) The minimum retail prices below which Sealy products could not be advertised;
>
> "(e) The minimum retail prices below which Sealy products could not be sold; and
>
> "(f) The means of inducing and enforcing retailers to adhere to these agreed upon and set prices."

These activities, as the District Court held, constitute a violation of the Sherman Act. Their anticompetitive nature and effect are so apparent and so serious that the courts will not pause to assess them in light of the rule of reason. See, *e. g., United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 210–218 (1940); *United States* v. *General Motors*, 384 U. S. 127, 147 (1966).

Appellee has not appealed the order of the District Court enjoining continuation of this price-fixing, but the existence and impact of the practice cannot be ignored in our appraisal of the territorial limitations. In the first place, this flagrant and pervasive price-fixing,

in obvious violation of the law, was, as the trial court found, the activity of the "stockholder representatives" acting through and in collaboration with Sealy mechanisms. This underlines the horizontal nature of the enterprise, and the use of Sealy, not as a separate entity, but as an instrumentality of the individual manufacturers. In the second place, this unlawful resale price-fixing activity refutes appellee's claim that the territorial restraints were mere incidents of a lawful program of trademark licensing. Cf. *Timken Roller Bearing Co.* v. *United States, supra.*[3] The territorial restraints were a part of the unlawful price-fixing and policing. As specific findings of the District Court show, they gave to each licensee an enclave in which he could and did zealously and effectively maintain resale prices, free from the danger of outside incursions. It may be true, as appellee vigorously argues, that territorial exclusivity served many other purposes. But its connection with the unlawful price-fixing is enough to require that it be

[3] In *Timken*, as in the present case, it was argued that the restraints were reasonable steps incident to a valid trademark licensing system. But the Court summarily rejected the argument, as we do here. It pointed out that the restraints went far beyond the protection of the trademark and included nontrademarked items, and it concluded that: "A trademark cannot be legally used as a device for Sherman Act violation." 341 U. S., at 599. Cf. the Lanham Act, 15 U. S. C. § 1115 (b)(7). In *Timken*, the restraints covered nonbranded merchandise as well as the "Timken" line. In the present case the restraints were in terms of "Sealy products" only. As to their private label products, the licensees were free to sell outside of the given territory and, so far as appears, without resale price collaboration or enforcement. But this difference in fact is not consequential in this case. A restraint such as is here involved of the resale price of a trademarked article, not otherwise permitted by law, cannot be defended as ancillary to a trademark licensing scheme. Cf. also *United States* v. *General Motors*, 384 U. S. 127, 142–143 (1966).

condemned as an unlawful restraint and that appellee be effectively prevented from its continued or further use.

It is urged upon us that we should condone this territorial limitation among manufacturers of Sealy products because of the absence of any showing that it is unreasonable. It is argued, for example, that a number of small grocers might allocate territory among themselves on an exclusive basis as incident to the use of a common name and common advertisements, and that this sort of venture should be welcomed in the interests of competition, and should not be condemned as *per se* unlawful. But condemnation of appellee's territorial arrangements certainly does not require us to go so far as to condemn that quite different situation, whatever might be the result if it were presented to us for decision.[4] For here, the arrangements for territorial limitations are part of "an aggregation of trade restraints" including unlawful price-fixing and policing. *Timken Roller Bearing Co.* v. *United States*, *supra*, 341 U. S., at 598. Compare *United States* v. *General Motors*, 384 U. S. 127, 147–148 (1966).[5] Within settled doctrine, they are unlawful under § 1 of the Sherman Act without the necessity for an inquiry

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[4] Cf. *Northern Pacific R. Co.* v. *United States*, 356 U. S. 1, 6–7 (1957): "As a simple example, if one of a dozen food stores in a community were to refuse to sell flour unless the buyer also took sugar it would hardly tend to restrain competition in sugar if its competitors were ready and able to sell flour by itself."

[5] MR. JUSTICE HARLAN observed, concurring in *United States* v. *General Motors*, 384 U. S. 127, 148–149, that "Although *Parke Davis* related to alleged price-fixing, I have been unable to discern any tenable reason for differentiating it from a case involving, as here, alleged boycotting." The same conclusion would seem to apply with respect to an alleged market division, which, like price-fixing, group boycotts, and tying arrangements, has been held to be a *per se* violation of the Sherman Act. *Northern Pac. R. Co.* v. *United States*, 356 U. S. 1, 5 (1958).

in each particular case as to their business or economic justification, their impact in the marketplace, or their reasonableness.

Accordingly, the judgment of the District Court is reversed and the case remanded for the entry of an appropriate decree.

MR. JUSTICE CLARK and MR. JUSTICE WHITE took no part in the decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 9.—October Term, 1966.

United States, Appellant, v. Sealy, Inc. | On Appeal From the United States District Court for the Northern District of Illinois.

[June 12, 1967.]

Mr. Justice Harlan, dissenting.

I cannot agree that on this record the restrictive territorial arrangements here challenged are properly to be classified as "horizontal," and hence illegal *per se* under established antitrust doctrine. I believe that they should be regarded as "vertical" and thus, as the Court recognizes, subject to different antitrust evaluation.

Sealy, Inc., is the owner of trademarks for Sealy branded bedding. Sealy licenses manufacturers in various parts of the country to produce and sell its products. In addition, Sealy provides technical and managerial services to them, conducts advertising and other promotional programs, and engages in technical research and quality control activities. The Government's theory of this case in the District Court was essentially that the allocation of territories by Sealy to its various licensees was unlawful *per se* because in spite of these other legitimate activities Sealy was actually a "front" created and used by the various manufacturers of Sealy products "to camouflage their own collusive activities . . ." Plaintiff's Brief in Opposition to Defendants' Briefs, October 12, 1961, pp. 12, 15.

If such a characterization of Sealy had been proved at trial I would agree that the division of territories is illegal *per se*. Horizontal agreements among manufacturers to divide territories have long been held to violate the anti-

trust laws without regard to any asserted justification for them. See *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *United States* v. *National Lead Co.*, 332 U. S. 319; *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593. The reason is that territorial divisions prevent open competition, and where they are effected horizontally by manufacturers or by sellers who in the normal course of things would be competing among themselves, such restraints are immediately suspect. As the Court noted in *White Motors Co.* v. *United States*, 372 U. S., 253, 263, they are "naked restraints of trade with no purpose except stifling of competition." On the other hand, vertical restraints—that is, limitations imposed by a manufacturer on his own dealers, as in *White Motors*, *supra*, or by a licensor on his licensees—may have independent and valid business justifications. The person imposing the restraint cannot necessarily be said to be acting for anticompetitive purposes. Quite to the contrary, he can be expected to be acting to enhance the competitive position of his product *vis-à-vis* other brands.

With respect to vertical restrictions, it has long been recognized that in order to engage in effective *interbrand* competition, some limitations on *intrabrand* competition may be necessary. Restraints of this type "may be allowable protections against aggressive competitors or the only practicable means a small company has for breaking into or staying in business (cf. *Brown Shoe* [v. *United States*, 370 U. S. 294], at 330; *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545, 560–561, aff'd, 365 U. S. 567) and within the 'rule of reason,'" *White Motors*, *supra*, at 263; see also *id.*, at 267–272 (concurring opinion of BRENNAN, J.). For these reasons territorial limitations imposed vertically should be tested by the rule of reason, namely, whether in the context of the particular industry, "the restraint imposed is such as merely regulates and perhaps thereby promotes competition or

whether it is such as may suppress or even destroy competition." *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238. Indeed the Court reaffirms these principles in the opinion which it announces today in *United States* v. *Arnold, Schwinn & Co., post.*

The question in this case is whether Sealy is properly to be regarded as an independent licensor which, as a prima facie matter, can be deemed to have imposed these restraints on its licensees for its own business purposes, or as equivalent to a horizontal combination of licensees, that is as simply a vehicle for effectuating horizontal arrangements between its licensees. On the basis of the findings made by the District Court, I am unable to accept the Court's classification of these restraints as horizontally contrived. The District Court made the following findings:

> "84. The preceding [detailed factual] findings indicate the type of evidence in this record that demonstrates that there has never been a central conspiratorial purpose on the part of Sealy and its licensees to divide the United States into territories in which competitors would not compete. Their main purpose has been the proper exploitation of the Sealy name and trademarks by licensing bedding manufacturers to manufacture and sell Sealy products in exchange for royalties to Sealy. The fact remains that each licensee was restricted in the territory in which he could manufacture and sell Sealy products. However, the record shows that this restriction was imposed by Sealy and was also secondary, or ancillary, to the main purpose of Sealy's license contracts.
>
> . . . . . .
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> "119. Plaintiff's evidence, read as a whole, conclusively proves that the Sealy licensing arrangements were developed in the early 1920's for entirely

> legitimate business purposes, including royalty income to Sugar Land Industries, which owned the Sealy name, trademarks and patents, and the benefits to licensees of joint purchasing, research, engineering, advertising and merchandising. These objectives were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage."

The Solicitor General in presenting the appeal to this Court stated explicitly that he did *not* contend "that Sealy, Inc. was no more than a facade for a conspiracy to suppress lawful competition," Brief, p. 12, since it admittedly did have genuine and lawful purposes. For me these District Court findings, which the Government accepts for purposes of this appeal, take this case out of the category of horizontal agreements, and thus out of the *per se* category as well.[1] Sealy has wholly legitimate interests and purposes of its own: it is engaged in vigorous interbrand competition with large integrated bedding manufacturers and with retail chains selling their own products.[2] Sealy's goal is to maximize sales of its products nationwide, and thus to maximize its royalties. The test under such circumstances should be the same as that

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[1] Compare *United States* v. *General Motors*, 384 U. S. 127, where the undisputed facts as found by the District Court, *id.*, at 140–141, proved a horizontal conspiracy among Chevrolet dealers to initiate and police a boycott of sales by dealers to discount houses. It is precisely because no such horizontal impetus was shown to exist here that I view this case differently. See my concurring opinion in *General Motors*, 384 U. S., at 148.

[2] The District Court made no findings as to the position of Sealy in the bedding industry, but on the basis of testimony introduced and not seriously contravened it appears that Sealy products are, by no means the largest selling bedding products, that Sealy manufacturers have many competitors both nationwide and local, and that advertising—particularly nationwide advertising—is an important competitive factor in the industry.

governing other vertical relationships, namely, whether in the context of the market structure of this industry, these territorial restraints are reasonable business practices, given the true purposes of the antitrust laws. See *White Motors, supra; Sandura Co.* v. *FTC*, 339 F. 2d 847. It is true that in this case the shareholders of Sealy are the licensees. Such a relationship no doubt requires special scrutiny.[3] But I cannot agree that this fact by itself *automatically* requires striking down Sealy's policy of territorialization. The correct approach, in my view, is to consider Sealy's corporate structure and decision-making process as one (but only one) relevant factor in determining whether the restraint is an unreasonable one. Compare *United States* v. *Penn-Olin Chem. Co.*, 378 U. S. 158, 170.

The Court in reaching its result relies heavily on the fact that these territorial limitations were part of "an 'aggregation of trade restraints,'" *ante*, p. 4, because the District Court has held that appellee did violate the Sherman Act by engaging in unlawful price fixing. "The territorial restraints," the Court says, "were a part of the unlawful price-fixing and policing," *ante*, p. 6. Nothing, however, in the findings of the District Court supports this conclusion. Indeed, the opposite conclusion is

[3] The Sealy trademark was originally owned by Sugar Land Industries, and its products were manufactured by a subsidiary, Sealy Mattress Co. In the 1920's independent manufacturers were licensed to produce Sealy products, and in 1925 Sugar Land sold the trademarks to a new corporation, Sealy Corp., owned by one E. E. Edwards and the various Sealy licensees. In 1933, when the economic depression eliminated a number of Sealy producers, the corporation was reorganized into the present Sealy, Inc. At present there are about 30 licensees owning approximately 90% of the stock. This joint-venture approach was created and maintained, the District Court found, "for entirely legitimate business purposes," such as obtaining the benefits "of joint purchasing, research, engineering, advertising and merchandising." Finding 119.

the more tenable one since the District Court that found Sealy guilty of price fixing found at the same time that it had not unlawfully conspired to allocate territories. The Government has not contended here that it is entitled to an injunction against territorial restrictions as a part of its relief in the price-fixing aspect of the case. The price-fixing issue was not appealed to this Court, and we can assume that the Government will obtain adequate and effective injunctive relief from the District Court. For these reasons the Court's "aggregation of trade restraints" theory seems to me ill-conceived.

I find nothing in the Court's opinion that persuades me to abandon the traditional "rule of reason" approach to this type of business practice in the context of the facts found by the trial court. The District Court, however, made no findings in respect to this theory for judging liability since the Government insisted on trying the case in *per se* terms, attempting to prove only a horizontal conspiracy. Although Sealy did introduce some evidence concerning the bedding industry, the territorialization issue was not tried in the terms of the reasonableness of the territorial restrictions. A motion to suppress Sealy's subpoena seeking discovery with respect to one of its leading competitors was successfully supported by the Government,[4] and no evidence directly aimed at

[4] See *United States* v. *Serta Associates, Inc.*, 29 F. R. D. 136, where in a companion action against another licensor of bedding products a similar subpoena was quashed after it was opposed by the Government. The District Court there noted: "The complaint alleges price fixing and market allocations by Serta, which it has denied. Defendant alleges the agreements made were reasonable ancillary restraints, valid under the Sherman Act, and the evidence sought by this subpoena would completely corroborate the reasonableness. The plaintiff, the Government, has also filed a brief supportive of the motion to quash the subpoena. It asserts that the complaint raises per se violations of the Sherman Act which fact renders completely irrelevant the subpoenaed material, tending to confirm the reasonableness of defendant's conduct."

justifying territorial limitations as a reasonable method of competition in the bedding industry was taken. Accordingly, the District Court made no findings as to such justification.

Although in the normal course of things I would have voted to remand the case for further proceedings and findings under the correct rules of law, I believe that since the Government deliberately chose to stand on its *per se* approach, and did not prevail, it should not be able to relitigate the case on an alternative theory, especially when it opposed appellee's efforts to present the case that way.

I would affirm the dismissal of this aspect of the case by the District Court.

A copy of this letter was sent to E. H. Bergman at Sealy, Inc. (GX 857; Tr. 1902-1903; Doc. 3-4130, 3-4131).

246. E. H. Bergmann for Sealy, Inc. in June 1955 wrote the Rochester licensee-member concerning an advertisement run by one of his retailers which Bergmann had received and which had violated every rule in the rule book of Sealy, Inc. Bergmann further informed the Rochester licensee-member that if he ever again permitted such a flagrant violation of Sealy, Inc.'s rules and regulations as had been permitted in that ad, his contract with Sealy, Inc. would be cancelled or he would be put on probation (GX 858; Tr. 1903-1905; Doc. 3-4165, 3-4166).

247. In July 1955, a retailer of the Chester licensee-member sent the Chester licensee-member an ad which another Sealy retailer in the area had run which featured Sealy products in combination with other items at a price below the agreed upon and set retail price for Sealy products [fol. 257] and informed the Chester licensee-member that Chester could not continue to carry Sealy products if he allowed that kind of advertising. The Chester licensee-member thereupon sent the ad to Sealy, Inc. and asked Sealy, Inc. whether the ad came within its "code" so the Chester licensee-member would know how to proceed. E. H. Bergmann for Sealy, Inc. replied that the dealer running the ad should be told emphatically that Sealy, Inc. did not approve of any Sealy resale item being combined with other items at a cut price and that such an indication of non-approval should be all that was necessary to keep the Chester licensee-member's retailers in line (GX 859-861; Tr. 1906-1911; Doc. 3-4151 to 3-4153).

248. In July 1955, the Schenectady and Brooklyn licensee-members exchanged correspondence about a retailer in New York City which advertised Sealy products below the agreed upon and set retail prices for Sealy products. Thereafter, the Schenectady licensee-member purchased a Sealy product from the retailer and found that it had been shipped by another retail customer of the Brooklyn licensee-member. In October 1955, the Schenectady licensee-member informed the Brooklyn licensee-member of his actions and the resultant findings and further that the offensive retailer's operation was very vicious in advertising and selling Sealy products at cut prices and since that re-

tailer had a large mailing list in the Schenectady licensee-[fol. 258] member's territory, he was causing a lot of trouble for the Schenectady licensee-member and his customers. The Brooklyn licensee-member replied that he had contacted his retail customer who had shipped the Sealy products to the offending retailer and he had admitted so supplying the offensive retailer and had guaranteed to no longer supply the offending retailer with any Sealy merchandise whatsoever. The Brooklyn licensee-member further stated that he had advised his retailer that he would continually police the offending retailer and if he found that he was selling Sealy products to the offending retailer the Brooklyn licensee-member would discontinue supplying him with Sealy products, and that the Brooklyn licensee-member would do everything in his power to stop the supply of Sealy merchandise to the offending retailer. The Brooklyn licensee-member forwarded a copy of this letter to Sealy, Inc. and the Waterbury and Patterson licensee-members. Subsequently, Sealy, Inc. by E. H. Bergmann on October 14, 1955 wrote the Brooklyn licensee-member with copies to the Schenectady and Waterbury licensee-members stating that since Sealy, Inc. had not received an answer from the Brooklyn licensee-member to its letter about the offending retailer, Sealy, Inc. assumed that the Brooklyn licensee-member had taken care of the situation in a manner satisfactory to the Brooklyn licensee-member's eastern associates (GX 865-867; Tr. 1917-1921; Doc. 3-4148, 3-4149).

[fol. 259] 249. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Richmond licensee-member concerning a retailer of the Richmond licensee-member who continually ran advertisements which were contrary to Sealy, Inc.'s retail advertising, merchandising, and price structure policies by featuring Sealy products below the agreed upon and set retail prices. Bergmann stated that Sealy, Inc. was not going to tolerate a customer taking carte blanche liberty with Sealy, Inc.'s policies and instructed the Richmond licensee-member to tell the retailer once and for all what Sealy, Inc.'s rules were and that the retailer must abide by them. Subsequently, the Richmond licensee-member telephoned the retailer and read to him portions of Bergmann's letter to the Richmond licensee-member. The same

day the Richmond licensee-member wrote the retailer requesting him to eliminate the objectionable features in his advertising as outlined by the Richmond licensee-member to the retailer and as outlined by Sealy, Inc. to the Richmond licensee-member, and informing him of the main objections to his advertisements and that it was mandatory that he adhere to Sealy, Inc.'s rules. The Richmond licensee-member further informed the retailer that Sealy, Inc. would insist that the Richmond licensee-member cease selling Sealy merchandise to him unless he eliminated the objectionable features from his advertising. The Richmond licensee-member then wrote Mr. Bergmann at Sealy, Inc. [fol. 260] informing him that he had impressed upon the retailer that if the retailer continued his policies as outlined by Sealy, Inc., Sealy, Inc. would not allow any more Sealy merchandise to be sold to him (GX 868-870; Tr. 1921-1923, 1926-1929; Doc. 3-4210 to 3-4214).

250. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Cleveland stockholder-licensee about an advertisement run by one of his retailers which was inconsistent with Sealy, Inc.'s advertising policies and suggested that the Cleveland stockholder-licensee speak to the retailer and get his assurance that he would refrain from such advertising in the future (GX 871; Tr. 1929-1930; Doc. 3-4182).

251. In March 1956, through E. H. Bergmann, Sealy, Inc. wrote to the Richmond licensee-member after his advertisements were submitted to Sealy, Inc. for credit on the advertising rebate program, that advertisements run by one of the Richmond licensee-member's retailers did not coincide with the Sealy, Inc. rules and regulations on retail advertising by featuring trade-in allowances on Sealy products, and instructed the Richmond licensee-member to advise the retailer that he could not use the trade-in feature in ads pertaining to Sealy merchandise (GX 872; Tr. 1931-1932; Doc. 3-4209).

252. In April 1956, the Cleveland stockholder-licensee informed one of his retailers that an ad run by the retailer [fol. 261] violated Sealy's retail advertising rules, that the Cleveland stockholder-licensee would not pay one cent towards the cooperative advertising agreement if any ad was run which violated the Sealy rules, and that such erroneous advertising would nullify any advertising agree-

ment which they may have had previously established. The Kansas City stockholder-licensee, having received complaints from several of its largest customers about this advertisement by the Cleveland stockholder-licensee's retailer, wrote Mr. Bergmann at Sealy, Inc. that because the Kansas City stockholder-licensee rigorously fights to police its retailers' ads so that they conform to Sealy, Inc.'s established retail advertising policies, the Kansas City stockholder-licensee had received numerous complaints from its customers about this ad by one of the Cleveland stockholder-licensee's retailers that obviously Sealy policy was not the same all over the United States, and further requested a statement from Sealy, Inc. which the Kansas City stockholder-licensee could pass on to its dealers (GX 874-875; Tr. 1934-1937; Doc. 3-4181, 3-4200, 3-4201).

253. In May 1956, a retailer of the Lexington licensee-member complained to the Lexington licensee-member about a retail outlet offering Sealy products below the set retail prices. The Lexington licensee-member's sales representative inquired at the retail outlet about the availability of mattresses and was told that they offered only Sealy mattresses and the price of the Posturepedic foam rubber [fol. 262] mattress was below the established retail price f.o.b. Washington, D. C. The Lexington licensee-member thereupon wrote Mr. Bergmann at Sealy, Inc. that it was quite obvious that the retail outlet was having this merchandise transferred to them from Washington, D. C., and requested Sealy, Inc. to take whatever action was necessary. Sealy, Inc. thereupon sent the Baltimore licensee-member a photocopy of the Lexington licensee member's letter, and requested the Baltimore licensee-member to inform the Lexington licensee-member of the steps the Baltimore licensee-member had taken to eliminate the situation. Sealy, Inc. also informed the Lexington licensee-member that the District of Columbia was a haven for price cutters, had no fair trade laws, and that the Baltimore licensee-member had been doing a masterful job in controlling the price cutters (GX 877-878; Tr. 1939-1942; Doc. 3-4202, 3-4203).

254. In June 1956, Sealy, Inc. wrote the Cleveland stockholder-licensee concerning an advertisement by one of his retailers that violated Sealy Policy Bulletin No. 7, govern-

ing restrictions on promotional advertising, and requested the Cleveland stockholder-licensee to bear down on the retailer for advertising Sealy products in violation of the Sealy retail advertising policies (GX 879; Tr. 1943-1944; Doc. 3-4176, 3-4177).

255. In June 1956, one of the Memphis licensee-member's retailers complained to the Memphis licensee-member about [fol. 263] the U. S. Merchandise Mart, Inc. in Fort Walton Beach, Florida, selling Sealy products at cost plus ten per cent out of Washington, D. C., and informed the Memphis licensee-member that the U. S. Merchandise Mart was an Army discount house. The retailer further informed Memphis that he had tried to be fair with the Sealy products and had not changed the retail price at which Memphis had told him to sell. Memphis thereupon forwarded a copy of the retailer's letter to Mr. Bergmann at Sealy, Inc. and asked Bergmann if he had heard from the Baltimore licensee-member concerning a previous similar situation as the Memphis licensee-member would like to bring the matter to a definite conclusion (GX 880; Tr. 1944-1947). In July 1956, Mr. Rudick, the Baltimore stockholder-licensee, ceased supplying the U. S. Merchandise Mart with Sealy products until it gave Baltimore written assurance that it would refrain from shipping Sealy merchandise out of the greater metropolitan Washington, D. C. area (GX 1168-1172; Tr. 3485-3492).

256. In July 1956, the Chester licensee-member sent Mr. Bergmann at Sealy, Inc. a clipping which advertised a Sealy product in violation of Sealy, Inc.'s retail advertising policy. The ad had been run by a retailer of the Cleveland licensee-member. The Chester licensee-member further informed Sealy, Inc. that "Ernie" (the Cleveland licensee-member) should at least police his own area. E. H. [fol. 264] Bergmann for Sealy, Inc. replied that this problem had been under review twice with the Cleveland stockholder-licensee and an issue would be made of the matter if there were any recurrences. Bergmann further pointed out that Sealy, Inc. had a clipping service and was watching for further violations, and Ernie (the Cleveland licensee-member) had promised to see that such violations were discontinued. Subsequently, in October 1956, the Chester

licensee-member again sent Bergmann at Sealy, Inc. an ad run by a retailer of the Cleveland licensee-member which also violated Sealy, Inc.'s retail advertising policies. Bergmann thereupon wrote to the Cleveland stockholder-licensee about this further violation of Sealy, Inc.'s rules and stated that ". . . in this particular type of an organization *where the rules are set by those who wish to be governed by said rules* you have to be either fish or fowl and, . . . certainly the chairman of the advertising and merchandising committee . . . should be the one to lead in the strict adherence to these rules" (emphasis supplied). Bergmann further expressed the hope that he would not have to continue writing to Cleveland on these matters of policy infractions (GX 881-882, 891-892; Tr. 1947-1950, 1961-1964; Doc. 3-4171 to 3-4175).

257. In August 1955, E. H. Bergmann at Sealy, Inc., after ads were submitted by the Denver stockholder-licensee for credit on the advertising rebate program, discovered that an ad by one of the Denver stockholder-licensee's retailers [fol. 265] showed Sealy products below the agreed upon and set retail price. Bergmann wrote the Denver stockholder-licensee concerning the violations and instructed him the cut in price could not be tolerated and further to direct a letter to the retailer calling his attention to the violation of Sealy, Inc.'s retail advertising policy and to obtain the retailer's immediate written assurance that the retailer would not repeat such price cutting on Sealy's nationally advertised resale items. Pursuant to these instructions, the Denver licensee-member wrote the retailer and informed him that the ad showing a price below the agreed upon and set retail price was a direct violation of Sealy's advertising policy, and solicited the retailer's immediate assurance that he would cooperate on future ads to avoid a recurrence. The Denver licensee-member also informed the retailer that all Sealy resale nationally advertised products could not "be advertised at discount, tie-in with a giveaway, trade-in allowance, or a group price," and that the ad had been called to the Denver licensee-member's attention by the Chicago office of Sealy, Inc. Denver forwarded a copy of this letter to Mr. Bergmann at Sealy, Inc. as per Bergmann's request. Thereafter Berg-

mann for Sealy, Inc. thanked the Denver licensee-member for his complete cooperation, referring to Denver's letter advising his retailer "of the complaint of the National Office," and stated that this letter was the proper technique [fol. 266] to follow in impressing Sealy dealers that they must comply with Sealy advertising and merchandising policies (GX 883-885; Tr. 1951-1954; Doc. 3-4220 to 3-4222).

258. In August 1956, E. H. Bergmann for Sealy, Inc. sent the Rochester licensee-member a photocopy of a vigilante service report showing that the Vigilante Service had purchased a Sealy Posturepedic mattress from a discount house in Rochester, New York, at a price below the established retail price for that mattress and included the discount house's invoice which showed the identity of the discount house, the purchases made, the price and the shipping instructions. Bergmann informed the Rochester licensee-member that "As you know we have a vigilante service which each year buys one mattress at retail for the purpose of learning how prices are maintained . . ." and instructed Rochester to inform Sealy, Inc. of the steps Rochester had taken to correct the erroneous selling of Sealy merchandise to a discount house. Rochester replied that he had notified the discount house that Rochester would discontinue selling Sealy products to the discount house in the future and had retained the services of a shopping service to canvass Rochester's accounts and ascertain if any of them were discount houses. Rochester further promised that in the future he would not sell Sealy products to any account which was in the discount house [fol. 267] class (GX 886-888; Tr. 1954-1958; Doc. 3-4223 to 3-4225).

259. In September 1956, Sealy, Inc. received from its clipping service a tear sheet of a full page advertisement by a retailer of the Rochester licensee-member which showed Sealy products below the agreed upon and set retail price. Mr. Bergmann of Sealy, Inc. thereupon wrote the Rochester licensee-member about the ad and informed Rochester that the ad was completely out of order because of the price stated therein and the name used thereon. Rochester replied that he would not offer this account any promotions in the future and would warn the account about

the ad informing him in very definite terms that Rochester would not permit anything like this in the future (GX 889-890; Tr. 1958-1961; Doc. 3-4215 to 3-4217).

260. In October 1956, the Detroit licensee-member sent Mr. Bergmann at Sealy, Inc. an ad run by a retailer in New York which violated Sealy, Inc.'s retail advertising policies. Bergmann replied that he would write the Brooklyn licensee-member admonishing him for allowing an ad to be run which violated Sealy, Inc.'s retail advertising policies. Bergmann then wrote to Brooklyn, as he had promised, about the offensive ad, pointing out the violations contained therein and instructed Brooklyn to tell the retailer that Sealy, Inc.'s rules "were not to be toyed [fol. 268] with" and to advise Bergmann accordingly. Brooklyn, as instructed, contacted the retailer about the ad and the retailer promised not to violate Sealy, Inc.'s retail advertising regulations in any future ads. Brooklyn so informed Bergmann of the retailer's promise (GX 893-895; Tr. 1966-1970; Doc. 3-4183 to 3-4185).

261. In November 1956, a retailer of the Chicago stockholder-licensee complained to Sealy, Inc. about an ad which showed a Sealy product at a price below that established for that product, and pointed out that he could buy other mattresses for less than he paid for Sealy products but that his store was willing to resell Sealy on a shorter margin because of Sealy's efforts to nationally advertise and presell Posturepedic products, but that for making this shorter margin concession, he expected inexorable price protection. The retailer further asked Sealy, Inc. what action it intended to take. The Chicago licensee-member replied to the retailer that Sealy's policy was to do everything within its persuasive and legal power to maintain their agreed upon and set advertised price on Sealy products and that a series of steps had been taken to make the company involved "comply with [Sealy's] policy and advertising requirements." Chicago then sent a copy of this letter to Sealy, Inc. (GX 896-897; Tr. 1971-1974; Doc. 3-4218, 3-4219).

262. In November 1956, E. H. Bergmann for Sealy, Inc. wrote the Baltimore licensee-member, complaining about a [fol. 269] full page ad run by a Baltimore retailer which

violated Sealy retail advertising policies, and condemned Baltimore as a member of the board of directors for permitting such an ad to be run (GX 898; Tr. 1974-1976; Doc. 3-4167, 3-4168).

263. E. H. Bergmann for Sealy, Inc. in November 1956 wrote the Fort Worth stockholder-licensee about a circular, one of the Fort Worth stockholder-licensee's retailers in *Texas* had distributed showing Sealy products below the agreed upon and set retail price. Fort Worth replied that, immediately upon receipt of Bergmann's letter, he had called the retailer who had withdrawn the offensive prices and agreed not to repeat such a circular. Fort Worth further pointed out to Mr. Bergmann that not only did the State of Texas not have fair trade laws, but that they had anti-fair trade laws and therefore Fort Worth could not afford to write a retailer and be too positive in protesting cut prices; however, most of the Fort Worth's dealers maintained the prices and cooperated with Fort Worth even though he did not have any weapons in Texas with which to fight (GX 899; Tr. 1977-1978; Doc. 3-4196).

264. In December 1956, the Chester licensee-member telephoned the Reading licensee-member about an ad run by a customer of Reading which showed a Sealy product at a price below the agreed upon and set minimum retail price for Sealy products. The next day Reading wrote E. H. Bergmann at Sealy, Inc., with a copy to the Chester [fol. 270] licensee-maker, and stated there was no question about the ad being a violation of Sealy, Inc.'s retail advertising and merchandising policy and that the retailer had run the ad against Reading's policy and without his knowledge. Reading further stated that he had an appointment with the retailer and the situation would be corrected. Subsequently, Chester wrote Reading, with a copy to Mr. Bergmann at Sealy, Inc., further informing Reading of the violations committed by advertising a Sealy product below the agreed upon and set minimum retail price. Chester also pointed out that "*we must always present to the public the thought that Sealy is a National Brand, not a brand manufactured by a number of different manufacturers but an entity,* even as the Simmons Co. is one," (emphasis supplied) and requested Reading to send

Chester a copy of Reading's letter to the retailer indicating "that they may not under any conditions advertise Sealy in Phoenixville, otherwise the privilege of allowing you [Reading] to ship . . . [into Chester's territory] will be withdrawn immediately insofar as the Sealy name is concerned," and admonishing them for violating Sealy, Inc.'s authorized retail advertising policies (GX 901; Tr. 1980-1983; Doc. 3-3835, 3-3835A).

265. It was Sealy, Inc.'s admitted policy to urge the stockholder-licensees to in turn urge their dealers to maintain the retail prices agreed upon and set by the stock-[fol. 271] holder-licensee representatives. As Mr. E. H. Bergmann, president of Sealy, Inc. from 1948 to 1960, put it, "We were always concerned with prices" (Tr. 3268-3269, 3271).

266. The purpose of the Sealy policy was to advertise Sealy products and "do everything we [Sealy, Inc.] possibly could to persuade the people to maintain those prices" (Tr. 3295).

267. In 1958, a retailer, Mr. G. N. Burkhart, Jr., in Brookston, Indiana, was informed by an official of the Chicago stockholder-licensee of Sealy, Inc. that Chicago was refusing to sell him any further Sealy products because Mr. Burkhart had not maintained the fixed retail prices for Sealy products (GX 1161; Tr. 3381-3395).

268. In late 1956 or early 1957, a retailer, Mrs. Norman Bennett of the U. S. Merchandise Mart, Inc. in Washington, D. C., was informed by an official of the Baltimore licensee-member that "Sealy would no longer be able to sell us [the retailer] merchandise" (Tr. 3496), since the retailer was not selling the Sealy products at the fixed retail price. Subsequently, when Mrs. Bennett forwarded orders for Sealy merchandise to Baltimore, they were not accepted (Tr. 3498).

269. From 1962 until the present day, a consumer in the Washington, D. C. area, after diligent search, could not purchase a Sealy product below the retail price fixed by the stockholder-licensee representatives of Sealy, Inc. (Tr. 3462-3477).

[fol. 272] 270. Sealy, Inc., through its various officers, regularly policed and enforced the retail prices on Sealy

products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. This policing and enforcement was carried out through (1) subscribing to clipping services, (2) the advertising rebate program of Sealy, Inc., whereby the stockholder-licensees would send copies of their ads and their retailers' ads to Sealy, Inc. for credit on this program, and (3) the reporting by the stockholder-licensees and their retailers to Sealy, Inc. when they noticed infractions of Sealy, Inc.'s retail policies and regulations. When violations of Sealy, Inc.'s retail regulations and policies were found, Sealy, Inc. by its officers would so inform the stockholder-licensees and instruct them to so inform their retailers or Sealy, Inc. by its officers would write directly to the retailers involved and inform them of the violations. The stockholder-licensees also regularly policed and enforced the retail prices set by the stockholder-licensee [fol. 273] representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. in the above described manner.

VIII. Use of Fair Trade to Enforce the Retail Prices Agreed Upon and Set by the Stockholder-Licensee Representatives of Sealy, Inc.

271. In May 1951, J. R. Lawrence for Sealy, Inc. wrote the Des Moines stockholder-licensee informing him that under the federal Miller-Tydings law, Sealy, Inc. could not establish resale prices for the entire group as they are not manufacturers, but they could direct their licensee-members to establish a uniform resale price (GX 902; Tr. 1984-1985; Doc. 3-4415.)

272. In June 1951, the Detroit licensee-member telephonically solicited from J. R. Lawrence at Sealy, Inc., ideas for a suggested letter that the Detroit licensee-member could send to its retailers. J. R. Lawrence thereupon sent the Detroit licensee-member a suggested letter and stated it was essential to give the retailers a list of the "fair traded" articles and the prices set thereon as agreed upon and set by the stockholder-licensee representatives which list J. R. Lawrence supplied (GX 903; Tr. 1986-1989; Doc. 3-4416, 3-4416A.)

273. The Baltimore stockholder-licensee issued a bulletin to all of its Sealy dealers on the subject of "Discount Houses" informing them that: (a) Sealy would not tolerate price cutting on "their re-sale numbers"; (b) Sealy prod-
[fol. 274] ucts would not be sold to discount houses; (c) discount houses had been shopped and the Baltimore stockholder-licensee had discovered that price cutters of Sealy merchandise were being supplied by so-called legitimate dealers; (d) the so-called legitimate dealers who were supplying these price cutters were breaking the law; (e) letters had been sent by Sealy attorneys to the parties involved threatening court action unless they ceased selling Sealy products to price cutters; (f) answers had been received from those who had been supplying the discount houses with Sealy products pledging to stop the practice in the future; (g) the Baltimore stockholder-licensee would take action, applicable to all fair trade areas, against any and all violators; and (h) the bulletin was to be a warning to all dealers found cutting the price on Sealy products or supplying anyone who cut the price on Sealy products (GX 904; Tr. 1989-1991; Doc. 3-4425).

274. In October 1953, the law firm of Haas, Holland and Blackshear, Atlanta, Georgia, by J. F. Haas, who was also the general counsel for Sealy, wrote a retailer in Baltimore, Maryland, threatening to refer to local counsel for prosecution the matter of the retailer's aiding another retailer who was selling Sealy products below the "fair trade" fixed price on Sealy products, if the retailer did not give immediate written assurance that he would immediately desist
[fol. 275] from that practice. The Atlanta law firm sent a copy of the letter to (a) Mr. E. H. Bergmann, the president of Sealy, Inc., (b) Mr. J. R. Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee. At the same time, J. F. Haas wrote to another retailer in Baltimore demanding that the retailer cease sales of Sealy products at less than the resale price and threatening to refer the matter to local counsel for prosecution unless Mr. Haas received within one week written assurance from the retailer that he would comply with the demand as stated in the letter. A copy of this letter was also sent to (a) the president of Sealy, Inc., Mr. E. H. Bergmann, (b) Mr. J. R.

Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee (GX 905-906; Tr. 1992-1994; Doc. 3-4426, 3-4427).

27. In May 1954, Mr. E. H. Bergmann for Sealy, Inc. wrote directly to a retailer of the Pittsburgh stockholder-licensee, concerning an ad run by that retailer which featured Sealy products below the "fair trade" retail price agreed upon and set by the stockholder-licensee representatives. Mr. Bergmann advised the retailer that if he advertised for sale or sold any Sealy products below the agreed upon and set retail "fair trade" price, Sealy, Inc. was prepared to take such action as would be necessary to protect Sealy, Inc.'s products and rights, and instructed the retailer to acknowledge the *notice and immediately advise* [fol. 276] Sealy, Inc. that he would abide by the minimum resale prices fixed for Sealy products. He further informed the retailer that a copy of Bergmann's letter was being sent to Sealy, Inc.'s general counsel with instructions to take immediate steps against the retailer if he did not agree to comply with the terms of that letter. In June 1954, Bergmann again wrote the retailer and informed him that although the retailer had received Bergmann's May 1954 letter, Bergmann had not received any reply from the retailer indicating his willingness to comply with the request to maintain the minimum resale "fair trade" prices fixed on Sealy products, and therefore, Sealy, Inc. had referred the matter to their general counsel for finalizing with instructions to immediately appoint local counsel to institute legal proceedings against the retailer. Mr. J. F. Haas, general counsel for Sealy, Inc., thereupon wrote the retailer informing him that Sealy, Inc. had referred the case to Mr. Haas as general counsel for Sealy, Inc. and stated that he understood that, at a conference between the retailer and Mr. Bergmann, an agreement had been reached that the retailer would immediately write Mr. Bergmann assuring him that the retailer would immediately cease selling Sealy products below the fixed retail "fair trade" price, and that such a letter had not been received. Haas further stated that unless such a letter was immediately sent to Mr. Bergmann with a copy to Mr. Haas, he would [fol. 277] refer the matter to local counsel with instructions to file immediate suit against the retailer. In July 1954,

Mr. J. F. Haas wrote an attorney in Youngstown, Ohio, that he, Haas, had referred the matter to local counsel in Ohio, and that the only remedy was for the retailer to provide Mr. Bergmann with the letter which he had promised in Chicago. In August 1954, Bergmann for Sealy, Inc. wrote the Pittsburgh stockholder-licensee that the controversy with the retailer had been successfully concluded, and a letter had been received from the retailer which stated that in the future the retailer would not sell Sealy products below the retail "fair trade" prices agreed upon and set by the stockholder-licensees. Bergmann further stated that "it has taken considerable pressure on the part of the national office, General Counsel, and finally resorting to the appointment of local counsel . . . to institute proceedings against this firm [the retailer] for violations of the Ohio Fair Trade law" (GX 907, 909-912; Tr. 1994-1996, 2000-2007; Doc. 3-4322, 3-4411 to 3-4413, 3-4435, 3-4436).

276. In June 1954, the Cleveland stockholder-licensee wrote its retailers that all Sealy resale pre-ticketed mattresses had been fair traded in the State of Ohio and all of Cleveland's Sealy retailers were bound by the fair trade law. He further informed the retailers that he had engaged a shopping service to investigate and report to him those dealers who were not abiding by the fair trade law, and [fol. 278] such dealers would receive a warning; if the violations continued thereafter, he would take steps as provided in the fair trade law to put an end to those practices (GX 908; Tr. 1999-2000; Doc. 3-4338).

277. In August 1954, a retailer of the Kansas City licensee-member in St. Joseph, Missouri, wrote to E. H. Bergmann at Sealy, Inc. complaining that another Sealy dealer, located about sixty miles from St. Joseph, was selling Sealy products below the fixed retail "fair trade" prices for those products and requested Sealy, Inc. to urge "the Kansas City [licensee-member] officials to take immediate steps to correct this intolerable situation." The retailer further informed Bergmann that he had taken up the matter with the officials of the Kansas City licensee-member and had been assured that the offending dealer would receive no more Sealy products. Mr. J. R. Lawrence for Sealy, Inc. replied, with a copy to the Kansas City licensee-member, that while Sealy, Inc. did not knowingly sell to discount

operations, the task of keeping Sealy merchandise out of their hands was a tremendous one, and any program to be successful against such operations required an effective fair trade program for which *Sealy, Inc. on a national basis* and the Kansas City licensee-member on a local basis were laboring, and they were doing all possible to frustrate the operations of the discounters. In September 1954, the Kansas City licensee-member wrote Mr. Bergmann at [fol. 279] Sealy, Inc. that he had visited the discount operator in Missouri and had informed him that it was absolutely essential that not *one* item of Sealy merchandise be *sold* below the fixed retail "fair trade" price which had been nationally advertised and, since the discounter had sold below that price, Kansas City would discontinue selling Sealy products to him. Subsequently, Bergmann replied to the Kansas City licensee-member that Kansas City had taken the correct steps to enforce the prices fixed by the Sealy, Inc. stockholder-licensee representatives and that he should not hesitate to pass the information to other dealers and further "*Vigilance* must be a rule in the support of *our* Fair Trade prices and trade names" (emphasis supplied) (GX 913-916; Tr. 2008-2013, 2015-2019; Doc. 3-4319 to 3-4321, 3-4437 to 3-4439).

278. In February 1955, J. R. Lawrence for Sealy, Inc. wrote a retailer of the Cleveland stockholder-licensee concerning an ad run by the retailer showing Sealy, Inc.'s fair traded merchandise below the fixed "fair trade" price for that product, and stated that Sealy, Inc. was taking all the steps *it* could to protect the "fair trade" price of *its* products and solicited the retailer's cooperation and written assurance that he would not sell Sealy products below the retail "fair trade" prices fixed for those products (GX 917; Tr. 2020-2021; Doc. 3-4433).

279. In March 1955, E. H. Bergmann for Sealy, Inc. wrote the Cleveland licensee-member about the decision by [fol. 280] the stockholder-licensee representatives on the Executive Committee to set up a fair trade program which would be backed up by the national office in trade paper advertisements and requested the Cldveland licensee-member to send him full data on Cleveland's own fair trade program. He further stated that "The more complete this data can be, ... the better it will serve the national

office purpose in formulating a national program to be presented to all of *our* people" (emphasis supplies). (GX 918; Tr. 2022-2023; Doc. 3-4418.)

280. Beginning before or during March 1954, the Cleveland stockholder-licensee employed Pinkerton's National Detective Agency for the purpose of shopping various retailers of the Cleveland stockholder-licensee to determine if they wre maintaining the retail "fair trade" prices on Sealy products as agreed upon and set by the stockholder-licensee representatives of Sealy, Inc. (GX 919-930; Tr. 2047; Doc. 3-4339 to 3-4402.)

281. Sealy, Inc. with the stockholder-licensees of Sealy, Inc. regularly used the fair trade laws to enforce the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of [fol. 281] Directors or Executive Committee of Sealy, Inc., through leters written by Sealy, Inc., through its various officers, to the retailers and through letters written by the stockholder-licensees to their retailers (1) insisting that the retailers discontinue violating the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc., (2) insisting that written assurance of compliance with such prices be forthcoming from the retailer, (3) informing the retailer that if such written assurance were not forthcoming, Sealy, Inc. or the stockholder-licensee would (a) discontinue supplying the retailer with Sealy products, (b) inform other retailers to cease supplying the retailer with Sealy products, and (c) take legal action against the retailer under state fair trade laws.

Conclusions of Law

1. This Court has jurisdiction of the defendant and the subject matter of this action.

2. Defendant is engaged in interstate commerce.

3. Plaintiff has not proved by a preponderance of evi- [fol. 282] dence that defendant, Sealy, Incorporated, has engaged in a combination and conspiracy with its manufacturing licensees to allocate territory among competitors in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

4. The assignment of exclusive territories by defendant, Sealy, to its manufacturing licensees does not violate the antitrust laws.

5. The defendant and its co-conspirators are and have been engaged in a continuing agreement, understanding, combination, and conspiracy in restraint of interstate commerce in mattresses and foundations in violation of Section 1 of the Sherman Act [15 U.S.C. § 1] by agreeing to set minimum retail prices on Sealy products and to induce retailers to adhere to such retail prices.

R. B. Austin, Judge, U. S. District Court.

Date: October 6, 1964.

[fol. 283] IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

vs.

SEALY, INC., Defendant.

FINAL JUDGMENT—December 30, 1964

Plaintiff, United States of America, filed its complaint on two separate claims of violation of Section 1 of the Sherman Act, 15 U.S.C. §1, described in paragraphs 16(a) and 16(b) of said complaint. The defendant, Sealy, Incorporated, appeared and filed its answer. At the close of the government's evidence in support of the claims, the defendant moved to dismiss said complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion was denied, but the court indicated that there would be no finding that the allegations of paragraph 16(a), and proof submitted thereon, proved a violation of the antitrust laws. [fol. 284] Defendant then presented its evidence relating to the price-fixing charge in paragraph 16(b) of the complaint and the government presented its rebuttal. At the close of all the evidence, the defendant renewed its motion to dismiss the claim of paragraph 16(a) of the complaint.

The court has considered the pleadings, evidence, briefs and arguments, and being fully informed, entered findings of fact and conclusions of law on October 6, 1964.

NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

This court has jurisdiction of the subject matter hereof and the parties hereto.

II

Based upon the court's findings of fact 15 through 19 and its conclusions of law 3 and 4, the defendant's renewed motion to dismiss the claim in paragraph 16(a) of the com-

plaint is granted and judgment is hereby entered dismissing the claim for relief contained in paragraph 16(a) of said complaint.

[fol. 285]

III

Based upon the court's findings of fact 120 through 281 and its conclusion of law 5, the defendant and its co-conspirators, who are its stockholder licensees, have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act by agreeing to set minimum retail prices in Sealy products and to induce retailers to adhere to such retail prices.

IV

As used in this Final Judgment:

(A) "Mattress" means an item of bedding composed of an outer covering, or tick, enclosing innersprings or a filler of latex, synthetic foam, felt or other materials, or both, designed to be used as a pad for a bed and usually rests upon bedsprings or other foundation or support;

(B) "Foundation" means an item of bedding, apart from the bedstead, designed to support the mattress and often to provide additional cushioning, commonly but not exclusively composed of an upholstered frame enclosing springs;

[fol. 286] (C) "Combination" means a mattress and foundation manufactured as a set to match each other and to be sold together;

(D) "Sleeper" means a sofa bed, studio couch, mattress, foundation, combination or Hollywood bed ensemble;

(E) "Sealy products" means bedding manufactured by Sealy licensees under Sealy's patents and secret methods, processes or specifications and sold under the Sealy brand-name and Sealy registered trademark;

(F) "Retail store" means a person engaged in the business of selling mattresses, foundation, combinations or sleepers to consumers;

(G) "Sealy licensee" means a person who is licensed by defendant to manufacture and sell Sealy products to dealers.

(H) "Dealer" means any person, other than defendant or a Sealy licensee, purchasing bedding for resale to the ultimate consumer.

V.

The provisions of this Final Judgment shall apply to the defendant, its successors, subsidiaries, assigns, officers, director, agents and its employees, and to all other persons [fol. 287] in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

VI

(A) The defendant is enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy.

(B) The defendant is enjoined from entering into, adhering to or maintaining any contract, agreement, arrangement, understanding, plan or program to:

(1) fix, establish or maintain the price or other terms or conditions for the sale at retail of any mattresses, foundations, combinations or sleepers;

(2) induce any dealer to fix, establish, or maintain any minimum retail price for any mattresses, foundations, combinations or sleepers;

Provided, however, that nothing herein contained shall be construed to prohibit the defendant from disseminating and using suggested retail prices for the purpose of national advertising of Sealy products.

VII

[fol. 288] (A) For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendent relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust [fol. 289] Division, the defendant shall submit such reports in writing to the plaintiff with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the such department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriae for the modification, termination, construction or carrying out of this Final Judgment and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained therein.

[fol. 290]

X

The plaintiff shall recover the costs of this action.

Enter: R. B. Austin, United States District Judge.

Chicago, Illinois, December 30, 1964.

[fol. 291] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

v.

SEALY, INC., Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 26, 1965

I. Notice is hereby given that the plaintiff, the United States of America, hereby appeals to the Supreme Court of the United States from the final decree entered in this action December 30, 1964 in so far as it dismissed the claim in paragraph 16(a) of the complaint in this action and failed to enjoin the defendant from limiting the territories within which defendant's licensees may sell Sealy mattresses and bedding products.

This apeal is taken pursuant to 15 U.S.C. 29.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court, including all papers filed with the Clerk of the court in this proceeding, the transcript of the trial proceedings, all exhibits submitted by the parties and this notice of appeal.

III. The questions presented are (1) whether Sealy, Inc., violated Section 1 of the Sherman Act (15 U.S.C. 1) by establishing and maintaining agreements with its licensee-shareholders whereby each licensee would sell Sealy mat- [fol. 292] tresses and bedding products only within an exclusive marketing territory allocated to it, and would refrain from selling Sealy products outside such territory, and (2) whether the court should, in any event, have enjoined the maintenance of such exclusive territories in view

of its finding that Sealy, Inc., and its licensees had violated Section 1 of the Sherman Act by engaging in resale price fixing.

/s/ John E. Sarbaugh. /s/ Bertram M. Long, Attorneys, Department of Justice, Room 2634, United States Courthouse, Chicago, Illinois 60604. 828-7538.

[fol. 293] Affidavit of Proof of Service omitted in printing.

[fol. 294] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

At Chicago, Illinois

UNITED STATES OF AMERICA, Plaintiff,

v.

SEALY, INC., Defendant.

ORDER EXTENDING TIME TO DOCKET APPEAL—April 22, 1965

Upon motion of the United States, and consent of the appellee, it is hereby ordered that the time for the appellant to docket this case on appeal in the Supreme Court of the United States shall be extended for a period of 30 days, *i.e.* until May 26, 1965.

Julius J. Hoffman, United States District Judge.

[fol. 295] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1965

No. 238

UNITED STATES, Appellant,

— v.

SEALY, INC.

Appeal from the United States District Court for the Northern District of Illinois.

ORDER NOTING PROBABLE JURISDICTION—October 11, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 238

UNITED STATES, APPELLANT,

vs.

SEALY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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No. 255—Letter from C. B. McGillivray to Guttman Furniture Co., Connersville, Indiana, dated October 30, 1950	594E	530
No. 256—Letter from J. R. Lawrence to Droege Furniture Co., Seymour, Indiana, dated November 8, 1950	595E	531
No. 257—Letter from C. B. McGillivray to Droege Furniture Co., Seymour, Indiana, dated October 30, 1950	597E	532
No. 258—Letter from J. R. Lawrence to Diekhoff & Vance, North Vernon, Indiana, dated November 8, 1950	598E	533
No. 259—Letter from C. B. McGillivray to Diekhoff & Vance, North Vernon, Indiana, dated October 30, 1950	600E	534
No. 260—Letter from J. R. Lawrence to Cure & Son, Martinsville, Indiana, dated November 8, 1950	601E	535
No. 261—Letter from C. B. McGillivray to Cure & Son, Martinsville, Indiana, dated October 30, 1950	603E	536
No. 262—Letter from J. R. Lawrence to Giltz Furniture Store, Brazil, Indiana, dated November 8, 1950	604E	537
No. 263—Letter from C. B. McGillivray to Giltz Furniture Store, dated October 30, 1950	606E	538

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 264—Letter from J. R. Lawrence to Buchanan-Jones, Columbus, Indiana, dated November 8, 1950	607E	539
No. 265—Letter from C. B. McGillivray to Buchanan-Jones, Columbus, Indiana, dated October 30, 1950	609E	540
No. 266—Letter dated January 16, 1951 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Incorporated	610E	541
No. 267—Letter dated February 7, 1951 from J. R. Lawrence to Sealy Mattress Company, Richmond, Va.	611E	542
No. 268—Letter dated April 22, 1952 from Sidney Sutherland of Sealy Mattress Company to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	612E	543
No. 269—Letter dated April 23, 1952 from Sidney Sutherland of Sealy Mattress Company to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	614E	545
No. 270—Letter dated May 5, 1952 from Joseph Rudick of Sealy Mattress Co. to Mr. Roger Lawrence of Sealy, Inc.	615E	546
No. 271—Letter dated May 7, 1952 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Baltimore, Md.	616E	547
No. 272—Letter dated May 12, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Baltimore, Md.	618E	549
No. 273—Letter dated May 28, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Baltimore, Md.	619E	550
No. 274—Letter dated June 19, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Baltimore, Md.	620E	551
No. 275—Letter dated February 20, 1951 from Linda Ballard of Sealy Company of the S.E. to Sealy, Incorporated	621E	552
No. 276—Letter dated February 23, 1951 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Memphis, Tennessee	622E	553
No. 277—Letter dated March 1, 1951 from Linda Ballard of Sealy Company of the S.E. to Sealy, Incorporated, Chicago, Ill.	623E	554

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 278—Letter dated February 22, 1951 from Louis G. Haas of Sealy Company of the S.E. to Sealy, Inc., Chicago, Ill.	624E	555
No. 279—Letter dated March 27, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Reading, Pa.	625E	556
No. 280—Letter dated April 13, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Reading, Pa. (excerpts)	627E	557
No. 281—Letter dated May 23, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Reading, Pa.	629E	558
No. 282—Letter dated June 6, 1951 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Lawrence, Chicago, Ill.	630E	559
Volume III—Exhibits		
No. 285—Letter dated May 7, 1951 from E. H. Bergmann of Sealy, Incorporated to Fisher Products Company, Chester, Pa.	631E	561
No. 289—Letter dated July 10, 1951 from Irving L. Fisher of Fisher Products Company to Sealy, Inc., Massillon, Ohio	633E	563
No. 290—Letter dated July 18, 1951 from E. H. Bergmann of Sealy, Incorporated to Fisher Products Company, Chester, Pa.	634E	565
No. 291—Letter dated April 10, 1952 from Linda Ballard of Sealy Company of the S.E. to Sealy, Incorporated, Chicago, Ill.	635E	566
No. 295—Letter dated July 15, 1952 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Richmond, Va.	636E	568
No. 296—Letter dated July 17, 1952 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	638E	569
No. 297—Letter dated August 4, 1952 from J. W. Moffitt, Jr. of Peerless Mattress Company to Sealy, Inc., Chicago, Ill.	640E	572
No. 298—Letter dated August 8, 1952 from E. H. Bergmann to J. R. Lawrence	644E	576
No. 299—Letter dated August 18, 1952 from J. R. Lawrence of Sealy, Incorporated to Peerless Mattress Co., Inc., Lexington, N.C.	645E	577
No. 300—Letter dated November 11, 1952 from J. V. Moffitt, Jr. of Peerless Mattress Company to Sealy, Incorporated, Chicago, Ill.	648E	580

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 300-A—Letter from J. R. Lawrence to J. V. Moffitt, Jr., Lexington, N.C.	650E	582
No. 301—Letter dated November 25, 1952 from J. V. Moffitt, Jr. of Peerless Mattress Company to Sealy, Incorporated, Chicago, Ill.	654E	587
No. 302—Letter dated December 24, 1952 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Richmond, Va.	655E	589
No. 303—Letter dated December 29, 1952 from Sidney Sutherland of Sealy Mattress Company to Mr. J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	656E	590
No. 304—Letter dated January 23, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md. (excerpts)	659E	593
No. 305—Letter dated January 26, 1953 from Joseph Rudick of Sealy Mattress Co. to Mr. Earl H. Bergmann of Sealy, Inc., Cleveland, Ohio	661E	594
No. 306—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	663E	596
No. 307—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Virginia	664E	597
No. 308—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	665E	598
No. 308-A—Letter dated February 9, 1953 from E. H. Bergmann to Joseph Rudick	666E	599
No. 309—Letter dated February 9, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. T. C. Engelhardt of Sealy Mattress Company, Reading, Pa.	667E	600
No. 310—Letter dated February 17, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	668E	601
No. 311—Letter dated February 20, 1953 from E. H. Bergmann to Mr. J. R. Lawrence	669E	601
No. 312—Letter dated February 12, 1953 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Inc.	670E	602

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 313—Letter dated February 12, 1953 from Sidney Sutherland of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated	671E	603
No. 314—Letter dated February 16, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company	672E	604
No. 315—Letter dated February 19, 1953 from Sidney Sutherland of Sealy Mattress Company to J. R. Lawrence of Sealy, Incorporated	673E	605
No. 316—Letter dated March 6, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. T. C. Engelhardt, Sr. of Sealy Mattress Company, Reading, Pa.	674E	606
No. 317—Letter dated August 29, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Detroit, Michigan	676E	608
No. 31—Letter dated August 16, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Morris A. Kaplan of Sealy Mattress Co., Chicago, Ill.	677E	609
No. 319—Letter dated September 15, 1954 from C. B. McGillivray of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	679E	611
No. 320—Letter dated September 28, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. C. B. McGillivray of Sealy Mattress Company, Chicago, Ill.	680E	612
No. 321—Letter dated October 6, 1954 from C. B. McGillivray of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	682E	614
No. 322—Letter dated October 7, 1954 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	684E	616
No. 323—Letter dated October 11, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. C. B. McGillivray of Sealy Mattress Company, Chicago, Illinois	686E	618
No. 324—Letter dated October 29, 1954 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	688E	620
No. 325—Inter Factory Correspondence of Sealy, Incorporated, dated January 12, 1955 from J. R. Lawrence to Mr. Johnson	689E	621

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 326—Letter dated January 26, 1955 from J. R. Lawrence of Sealy, Incorporated to Mr. Joseph F. Haas of Haas, Holland & Blackshear, Atlanta, Ga.	690E	622
No. 327—Letter dated June 9, 1956 from Peter D. Brown of Sealy Mattress Company to Mr. Earl Bergmann of Sealy, Incorporated, Chicago, Ill.	691E	623
No. 328—Letter dated June 12, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. M. A. Kaplan of Sealy Mattress Company, Chicago, Ill.	692E	624
No. 329—Letter dated June 15, 1956 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	693E	625
No. 330—Letter dated December 4, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Kansas City, Mo.	694E	627
No. 331—Letter dated January 14, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Edgar Haas, Sr. of Slumber Products Corporation, Memphis, Tenn.	695E	628
No. 332—Letter dated January 19, 1953 from Ross S. Rosenberg of Sealy Mattress Company to Sealy Mattress Company (excerpts)	697E	630
No. 333—Letter dated January 14, 1953 from Morris A. Kaplan of Sealy Mattress Company to Mr. Ross Rosenberg of Sealy Mattress Company, St. Paul, Minn.	699E	631
No. 334—Letter dated January 27, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. H. L. Forbes of Sealy Mattress Company, Louisville, Ky.	702E	633
No. 335—Letter dated January 28, 1953 from Harry L. Forbes to Mr. J. R. Lawrence of Sealy, Inc., Chicago, Ill.	703E	634
No. 336—Letter dated June 26, 1953 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Sealy Incorporated, Chicago, Ill.	704E	635
No. 337—Letter dated June 29, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	705E	636
No. 338—Letter dated July 9, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc.	706E	637

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued — Original — Print

No. 338-A—Letter dated July 8, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. Jules Shapiro of Central Mattress Company, Omaha, Nebraska 707E 638

No. 339—Letter dated July 13, 1953 from Edgar C. Haas of Slumber Products Corporation to Sealy, Incorporated, Chicago, Ill. 708E 640

No. 342—Letter dated September 16, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. Edgar Haas of Sealy Mattress Company, Memphis, Tenn. 709E 641

No. 343—Letter dated September 29, 1953 from Robert B. Conover of Slumber Products Corporation to Mr. J. R. Lawrence of Sealy, Incorporated, Chicago, Ill. 710E 642

No. 344—Letter dated October 13, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Robert B. Conover of Sealy Mattress Company, Memphis, Tenn. 711E 643

No. 345—Letter dated July 23, 1953 from E. H. Bergmann to Mr. J. R. Lawrence with an enclosure of memorandum dated July 10, 1953 from J. R. Lawrence to E. H. Bergmann 712E 644

No. 346—Letter dated October 9, 1953 from C. B. McGillivray of Sealy Mattress Company to Mr. Marcus Haas of Sealy Mattress Company, Memphis, Tenn. 714E 646

No. 347—Letter dated January 25, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va. 716E 648

No. 348—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio 717E 649

No. 349—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md. 718E 651

No. 350—Letter dated January 27, 1953 from Joseph Rudick of Sealy Mattress Company to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va. 719E 652

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 355—Letter dated January 28, 1954 from Joseph Rudick of Sealy Mattress Company to Mr. Irving Fisher of Sealy Mattress Company, Chester, Pa.	720E	653
No. 356—Letter dated February 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	721E	654
No. 357—Letter dated June 4, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Earl H. Bergmann, Sealy Incorporated, Chicago, Ill.	722E	655
No. 358—Letter dated June 10, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Co., Baltimore, Md.	723E	656
No. 359—Letter dated June 15, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Irving L. Fisher, Chester, Pa.	724E	657
No. 360—Letter dated July 14, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Irving L. Fisher of Sealy Mattress Co., Chester, Pa.	725E	658
No. 361—Letter dated July 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Earl Bergmann of Sealy, Incorporated, Cleveland, Ohio	726E	659
No. 364—Letter dated October 4, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. Louis Haas of Sealy Mattress Company, Ft. Worth, Texas	727E	661
No. 366—Letter dated October 19, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. R. S. Rogers of Sealy Mattress Company, Brenham, Texas	728E	662
No. 367—Letter dated October 21, 1954 from R. S. Rogers of Sealy Mattress Company to Mr. Roger Lawrence of Sealy, Incorporated, Chicago, Illinois	729E	663
No. 372—Letter dated April 18, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	730E	664
No. 373—Letter dated April 28, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	731E	665

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 374—Letter dated September 16, 1955 from Ross S. Rosenberg of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy, Inc., Chicago, Ill.	732E	666
No. 375—Letter dated September 19, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ross S. Rosenberg of Sealy Mattress Company, St. Paul, Minn.	734E	668
No. 376—Letter dated September 22, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	736E	670
No. 377—Letter dated September 23, 1955 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	737E	671
No. 378—Letter dated October 3, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	739E	673
No. 379—Letter dated October 12, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. J. L. Metcalfe of Sealy Mattress Company, Bluefield, Va. and Mr. Wm. A. Edie of Sealy Mattress Company, Louisville, Ky.	740E	674
No. 380—Letter dated October 14, 1955 from William A. Edie of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	741E	675
No. 381—Letter dated October 21, 1955 from William A. Edie of Sealy Mattress Co. to Mr. Earl Bergmann of Sealy, Inc., Chicago, Ill.	742E	676
No. 382—Letter dated October 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	743E	677
No. 383—Letter dated May 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Louis J. Gross of Sealy Mattress Company, Rochester, N.Y.	745E	679
No. 384—Letter dated May 23, 1956 from E. Carter Logan of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	747E	681
No. 385—Letter dated June 4, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. C. Logan of Sealy Mattress Company, Louisville, Ky.	749E	683

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 386—Letter dated June 8, 1956 from Edgar C. Haas Sr. of Sealy Southeast to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	760E	684
No. 387—Letter of June 12, 1956 from E. H. Bergmann of Sealy Incorporated to Mr. Edgar C. Haas Sr., of Sealy Mattress Company	761E	685
No. 388—Letter dated June 25, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph F. Haas, Atlanta, Ga.	762E	686
No. 389—Letter dated August 27, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	763E	687
No. 390—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Company, Lexington, N.C.	765E	689
No. 391—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Company, Baltimore, Md.	766E	690
No. 392—Letter dated November 23, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	767E	691
No. 393—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Co., Lexington, N.C.	770E	694
No. 394—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joe Rudick of Sealy Mattress Co., Baltimore, Md.	772E	695
No. 395—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 12, 1943 from J. R. Haas to Mr. W. J. Craig	774E	697
No. 396—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 8, 1943 from J. R. Haas to Mr. W. J. Craig	775E	698
No. 397—Letter dated July 31, 1944 from Herbert H. Neilson of Sealy Mattress Company to Sealy Mattress Company, Pittsburgh, Pa.	776E	699

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 398—Letter dated August 7, 1944 from W. W. Llewellyn, Jr. of Fort Pitt Bedding Company & Sealy Mattress Company to Mr. Herbert Neilson of Sealy Mattress Company, Cincinnati, Ohio	777E	700
No. 399—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to Mr. John Brody, Sealy Mattress Company, Chicago, Illinois	778E	702
No. 400—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to the Sealy Mattress Company, Pittsburgh, Pa.	779E	703
No. 401—Letter dated September 23, 1944 from J. M. Brody, Jr. of Sealy, Inc. to Mr. Herbert H. Neilson of Sealy Mattress Co., Cincinnati, Ohio	780E	704
No. 402—Communication dated September 23, 1944 from J. M. Brody, Jr. to Mr. J. R. Haas, "Ohio Boundary Line of Sealy at Cincinnati and Pittsburgh"	781E	706
No. 403—Letter dated September 23, 1944 from Sealy, Inc. to Mr. W. W. Llewellyn, Jr. of Sealy Mattress Co., Pittsburgh, Pa.	782E	707
No. 404—Letter dated September 28, 1944 from W. J. Craig of Sealy, Incorporated to Mr. J. R. Haas	783E	709
No. 409—Letter dated September 16, 1949 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Cleveland, Ohio	784E	710
No. 410—Letter dated May 27, 1950 from Ben Rosenfeld of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy Mattress Company, Cleveland, Ohio	785E	711
No. 411—Letter dated November 16, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	787E	713
No. 412—Letter dated January 8, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	788E	714
No. 413—Letter dated July 24, 1952 from J. J. Willens, Sealy Mattress Co. of Southern California to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	789E	715

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 413-A—Letter dated July 29, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	792E	718
No. 413-B—Letter dated August 26, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Los Angeles, Calif.	793E	719
No. 414—Letter dated December 8, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	794E	720
No. 415—Letter dated March 31, 1953 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	795E	721
No. 415-A—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc. to Harry B. Forbes, Sealy Mattress Co., Louisville, Ky.	797E	723
No. 415-B—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	798E	723
No. 416—Memorandum dated May 12, 1953 from R. S. Logan to Mr. Bergmann	799E	724
No. 417—Letter from H. L. Forbes, Logan Co., Louisville, Ky. to E. H. Bergmann, Sealy, Inc. dated May 12, 1953	800E	724
No. 417-A—Letter dated May 13, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	802E	726
No. 418—Letter dated May 15, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Ill. to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	804E	728
No. 419—Letter dated May 20, 1953 from Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	806E	730
No. 420—Letter dated May 19, 1953 from E. H. Bergmann to H. M. Forbes, Sealy Mattress Co., Louisville, Ky.	808E	732
No. 421—Letter dated May 20, 1953 from E. H. Bergmann to H. L. Forbes, Sealy Mattress Co., Louisville, Ky.	809E	733
No. 422—Memorandum from J. R. Lawrence to E. H. Bergmann dated January 14, 1954	811E	734
No. 423—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois	812E	736
No. 424—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to J. R. Lawrence, Sealy, Inc., Chicago, Ill.	813E	737

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 425—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co., to Sealy, Inc., Cleveland, Ohio	814E	738
No. 426—Letter dated January 28, 1954 from C. B. McGillivray, Sealy, to R. B. Swearingen, Sealy Mattress, Louisville, Ky.	815E	739
No. 427—Telegram dated February 5, 1954 from Earl Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy, Chicago, and R. B. Swearingen, Sealy, Louisville, Ky.	816E	740
No. 428—Telegram dated February 8, 1954 from R. B. Swearingen, Logan Co., to E. H. Bergmann, Sealy, Inc.	817E	740
No. 429—Letter dated February 5, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	818E	741
No. 430—Letter dated March 15, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGillivray, Sealy, Chicago, Ill.	820E	743
No. 431—Letter dated February 16, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	821E	744
No. 432—Agreement dated April 2, 1954 between Sealy Mattress of Chicago and Sealy Mattress of Louisville re Pearsons Furniture & Music Co. of Indianapolis	823E	746
No. 433—Letter dated March 22, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGillivray, Sealy, Chicago, Ill.	824E	748
No. 434—Letter dated March 25, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	825E	749
No. 435—Letter dated April 2, 1954 from C. B. McGillivray, Sealy, Chicago, Illinois to R. B. Swearingen, Sealy, Louisville, Ky.	827E	751
No. 436—Letter dated April 8, 1954 from R. L. Howard, Logan Co. to Earl Bergmann, Sealy, Inc., Cleveland, Ohio	829E	753
No. 437—Letter dated April 19, 1954 from E. H. Bergmann, Sealy, Inc. to R. L. Howard, Sealy, Louisville, Ky.	832E	756
No. 438—Letter dated February 14, 1955 from Wm. A. Edie, Louisville, Ky. to C. B. McGillivray, Sealy, Chicago, Ill.	833E	757

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 439—Letter dated February 15, 1955 from C. B. McGillivray, Chicago, Ill. to Bill Edie, Sealy, Louisville, Ky.	834E	758
No. 440—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky. and C. B. McGillivray, Sealy, Chicago, Ill.	835E	759
No. 441—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill. and Wm. A. Edie, Sealy, Louisville, Ky.	836E	760
No. 442—Letter dated February 21, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	837E	761
No. 443—Letter dated February 24, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	838E	762
No. 444—Letter dated February 27, 1955 from W. A. Edie, Sealy, Louisville, Ky. to Earl Bergmann, Cleveland, Ohio with attachments	839E	763
No. 445—Telegram dated March 2, 1955 from Earl Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	843E	769
No. 446—Letter dated March 2, 1955 from C. B. McGillivray, Sealy, Chicago, Ill. to Earl Bergmann, Sealy, Chicago, Ill.	844E	769
No. 447—Letter dated April 11, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	846E	771
No. 447-A—Agreement dated January 1, 1955 between Sealy of Chicago and Sealy of Louisville, Ky.	847E	772
No. 448—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	848E	773
No. 449—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	849E	774
No. 450—Letter dated June 8, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	850E	775
No. 451—Letter dated August 3, 1955 from E. H. Bergmann, Sealy to E. C. Logan, Sealy, Louisville, Ky.	851E	776

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 452—Letter dated January 11, 1956 from Robert L. Howard, Controller to Ray Garland, Pearsons, Chicago, Ill.	854E	778
No. 453—Letter dated October 17, 1956 from Fielden Woodward, Woodward, Hobson & Fulton, Louisville, Ky. to E. H. Bergmann, Sealy, Inc.	855E	779
No. 454—Letter dated October 29, 1956 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago, Ill.	858E	782
No. 455—Letter dated November 8, 1956 from E. C. Logan, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	859E	783
No. 456—Letter dated March 12, 1953 from J. R. Lawrence, Sealy, Inc. to H. L. Forbes, Sealy, Louisville, Ky.	861E	785
No. 457—Memorandum from J. R. Lawrence to E. H. Bergmann, dated April 14, 1953	862E	786
No. 458—Letter dated October 14, 1953 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	863E	787
No. 459—Letter from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland, Ohio, dated December 24, 1953	865E	789
No. 460—Letter from R. G. Culp, Sealy, Pittsburgh, to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	866E	790
No. 461—Letter dated January 12, 1954 from E. H. Bergmann, Sealy, Inc. to Sealy of Pittsburgh	867E	792
No. 461-A—Letter dated May 18, 1954 from E. H. Bergmann, Sealy, Inc. to Max Lewis, Sealy, Paterson, N.J.	869E	793
No. 461-B—Letter from M. Lewis, Sealy, Paterson, N.J. to E. H. Bergmann, Sealy, Inc., dated May 20, 1954	870E	794
No. 462—Letter dated July 19, 1954 from Morris A. Kaplan, Sealy, Chicago to Marcus Haas, Sealy, Memphis, Tenn.	872E	795
No. 463—Letter dated July 21, 1954 from M. L. Haas, Sealy Company of the Southeast to Sealy, Chicago, Ill.	873E	796
No. 464—Letter dated July 26, 1954 from Morris A. Kaplan, Sealy, Chicago, Ill. to H. N. Ryden, Sealy, Des Moines, Iowa	875E	798

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 465—Letter dated August 3, 1954 from H. N. Ryden, Sealy, Des Moines to Morris A. Kaplan, Sealy, Chicago, Ill.	877E	801
No. 466—Letter dated August 10, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Chicago; Harry Ryden, Des Moines; Marcus Haas, Memphis; and P. D. Brown, Detroit	878E	802
No. 467—Letter dated August 12, 1954 from H. N. Ryden, Sealy, Des Moines to Earl H. Bergmann, Sealy, Inc.	880E	804
No. 468—Letter dated August 13, 1954 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	881E	805
No. 469—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Harry Ryden, Sealy, Des Moines	882E	806
No. 470—Letter dated August 19, 1954 from M. L. Haas, Sealy, Memphis to Sealy, Inc., Cleveland	883E	807
No. 471—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville	884E	808
No. 472—Letter dated September 7, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville, Ky.	885E	809
No. 473—Letter dated September 9, 1954 from "Leon", Sealy, Louisville to Ralph Swearingen	886E	810
No. 474—Letter dated September 13, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc.	887E	812
No. 475—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph B. Swearingen, Sealy, Louisville	888E	814
No. 476—Letter dated August 24, 1954 from J. R. Rudick, Sealy, Baltimore to Earl Bergmann, Sealy, Inc. with attached letter dated August 24, 1954 from J. R. Rudick to Eugene Kligman, Sealy, Brooklyn	889E	815
No. 477—Letter dated August 26, 1954 from E. H. Bergmann, Sealy, Inc. to Joseph Rudick, Sealy, Baltimore, Md.	892E	818
No. 478—Letter dated September 15, 1954 from M. L. Haas, Sealy, Memphis to Louis G. Haas, Sealy of the Southwest	893E	819
No. 479—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to C. McGillivray, Sealy, Chicago, Ill.	894E	820

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 480—Letter dated December 28, 1954 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	896E	822
No. 481—Letter dated December 30, 1954 from Ernest M. Wuliger, Sealy, Cleveland, to H. F. Kaufman, Sealy, Pittsburgh	897E	823
No. 483—Letter dated January 7, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	898E	824
No. 484—Letter dated January 7, 1954 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	899E	825
No. 485—Letter dated January 10, 1955 from (?) to Ernest	900E	826
No. 486—Letter dated January 13, 1955 from Ernest M. Wuliger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc.	901E	828
No. 487—Letter dated January 14, 1955 from E. H. Bergmann, Sealy, Inc. to Ernest M. Wuliger, Sealy, Cleveland, Ohio	902E	829
No. 488—Letter dated January 17, 1955 from Ernest M. Wuliger, Ohio Mattress Co., Cleveland to E. H. Bergmann, Sealy, Inc., Cleveland	904E	831
No. 489—Letter dated February 17, 1955 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	905E	833
No. 490—Letter dated March 11, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	907E	835
No. 491—Memorandum dated March 17, 1955 from Kay K. Kaplan to Mr. Bergmann	908E	836
No. 492—Letter dated March 17, 1955 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	910E	837
No. 493—Letter dated February 10, 1955 from C. B. McGillivray to Bill Edie, Logan Company, Louisville, Ky.	911E	838
No. 494—Letter dated June 20, 1955 from Roy B. Unger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc., Chicago	912E	839
No. 495—Letter dated July 6, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland	913E	840
No. 496—Letter dated August 9, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland, and J. DiSalvo, Sealy, Pittsburgh	914E	841

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 497—Letter dated July 25, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago	915E	842
No. 498—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	916E	843
No. 499—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	917E	844
No. 500—Letter dated August 8, 1955 from Morris A. Kaplan, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	918E	845
No. 501—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	919E	846
No. 502—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	920E	847
No. 503—Letter dated September 20, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	921E	848
No. 504—Letter dated September 22, 1955 from D. B. Embree, Sealy, Memphis, to E. H. Bergmann, Sealy, Inc., Chicago	922E	849
No. 505—Letter dated October 15, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc. with attached catalog sheet of Harrison Wholesale Company	923E	850
No. 506—Letter dated October 18, 1955 from E. H. Bergmann, Sealy, Inc. to D. B. Embree, Sealy, Memphis	925E	853
No. 507—Letter dated August 18, 1955 from A. Eisenberg, Sealy, New York to Max Lewis, Sealy, Paterson, N.J.	926E	854
No. 508—Letter dated August 24, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Brooklyn	927E	855
No. 509—Letter dated August 29, 1955 from Eugene Kligman, Sealy, New York to Earl Bergmann, Sealy, Inc.	928E	856
No. 510—Letter dated September 19, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Sealy, Brooklyn	929E	857

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 511—Letter dated November 2, 1955 from Eugene Kligman, Sealy, Brooklyn to Earl Bergmann, Sealy, Inc. Chicago	930E	858
No. 512—Letter dated October 26, 1955 from Fred Weintraub, Darling Distributing Corp., N.Y. to Gene Kligman, Sealy, Brooklyn	932E	860
No. 513—Letter dated September 7, 1955 from J. R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	933E	861
No. 514—Letter dated May 21, 1956 from J. R. Rudick, Sealy, Baltimore to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	935E	863
No. 515—Letter dated April 18, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	936E	864
No. 516—Letter dated April 13, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	938E	866
No. 517—Letter dated September 26, 1955 from Sidney Sutherland, Sealy, Richmond, Va. to Joe Moffitt, Sealy, Lexington, N.C.	941E	869
No. 518—Letter dated October 14, 1955 from J. V. Moffitt, Jr., Sealy, Lexington, N.C. to Sidney Sutherland, Sealy, Richmond, Va.	942E	870
No. 519—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	944E	872
No. 520—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	945E	873
No. 521—Letter dated July 5, 1956 from Joseph R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc.	946E	874
No. 522—Letter dated February 29, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	948E	876
No. 523—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	949E	877
No. 524—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	950E	878
No. 525—Letter dated March 12, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	951E	879

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 526—Letter dated May 7, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	952E	880
No. 527—Letter dated May 8, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	953E	881
No. 528—Letter dated December 4, 1956 from Edgar C. Haas, Jr., Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	954E	882
No. 529—Letter dated December 17, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar C. Haas, Jr., Sealy, Memphis	955E	883
No. 530—Letter dated December 18, 1956 from E. H. Bergmann, Sealy, Inc. to J. L. Metcalfe, Sealy, Bluefield, Va.	956E	884
No. 531—Letter dated December 26, 1956 from J. L. Metcalfe, Sealy, Bluefield, Va. to E. H. Bergmann, Sealy, Inc.	957E	885
No. 532—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar Haas, Jr., Sealy, Memphis, Tenn.	958E	886
No. 533—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to R. G. Culp, Sealy, Pittsburgh	959E	887
No. 534—Letter dated December 31, 1956 from R. G. Culp, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	960E	888
No. 601—Minutes of the Sealy Board of Directors Meeting, held at Pittsburgh, Pa., November 4, 1938 (excerpts)	961E	889
No. 638—Minutes of Reconvened Meeting of Sealy, Inc. Board of Directors, held at San Souci Hotel, Miami Beach, Florida, April 7, 1954 (excerpts)	968E	890
No. 662—Minutes of the Advertising & Merchandising Committee Meeting in Chicago, Ill., December 11, 1956 (excerpts)	972E	891
No. 664—Minutes of the Advertising & Merchandising Committee Meeting in New York, January 26, 1957 (excerpts)	978E	896
No. 741—Bulletin from J. R. Lawrence to all Sealy Licensees. Subject: Resume of royalty payments. Dated May 29, 1952 (excerpts)	984E	900

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 753—Bulletin from E. H. Bergmann to all Sealy Licensees. Subject: Programs of procedure approved and adopted by the Board of Directors. Dated May 28, 1954	986E	901
No. 777—Bulletin from E. H. Bergmann to all Sealy plants. Subject: Specification and cost committees for 1956. Dated February 17, 1956	989E	904
No. 816—Letter from Ernest M. Wuliger to E. H. Bergmann. Dated February 11, 1953	990E	905
No. 817—Letter from H. F. Kaufman to E. H. Bergmann. Dated February 18, 1953	991E	906
No. 887—Letter from J. V. Moffitt, Jr. to E. H. Bergmann. Dated May 4, 1956	992E	908
No. 878—Letter from E. H. Bergmann to J. V. Moffitt, Jr., dated May 8, 1956	993E	909
No. 932—Minutes of Executive Committee Meeting, held William Penn Hotel, Pittsburgh, Pa., December 14, 1936 (excerpts)	994E	910
No. 933—Minutes of Executive Committee Meeting, held Stevens Hotel, Chicago, Ill., January 7, 1937 (excerpts)	999E	913
No. 934—Minutes of Board of Directors Meeting, held Stevens Hotel, Chicago, Ill., January 8, 1937 (excerpts)	1002E	916
No. 937—Minutes of the Board of Directors Meeting, held Palmer House, Chicago, Ill., June 30 and July 1, 1937 (excerpts)	1004E	916
No. 938—Minutes of the Stockholders Meeting of Sealy, Inc., held Palmer House, Chicago, Ill., July 2 and 3, 1937 (excerpts)	1006E	917
No. 939—Alphabetical list of Stockholders, December 6, 1937 and Sealy Annual Meeting, held Palmer House, Chicago, Ill. Board of Directors, December 7, 1937 (excerpts)	1008E	918
No. 940—Sealy Stockholders Meeting, held Palmer House, Chicago, Ill., December 7, 1937 (excerpts)	1012E	920
No. 941—Minutes of Executive Committee Meeting, held Hotel George Washington, W. Palm Beach, Fla., February 21 and 22, 1938 (excerpts)	1022E	923
No. 946—Minutes of the Semi-Annual Meeting of Members and Stockholders of Sealy, Incorporater, held Pursuant to Notices Duly Mailed, at the Congress Hotel, Chicago, Illinois, July 2, 1941 (excerpts)	1028E	924

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 950—Proceedings of Licensee Meeting Sealy, Inc., held Palmer House, Chicago, Illinois, November 28, 1942 (excerpts)	1029E	925
No. 951—Minutes of the Meeting of the Licensees of Sealy Incorporated, held at the Chicagoan Hotel, December 4, 1943	1031E	926
No. 956—Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 23, 1945 (excerpts)	1033E	928
No. 957—Minutes of the Meeting of the Licensees of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 25, 1945 (excerpts)	1035E	928
No. 958—List of Stockholders, Sealy, Incorporated, March 9, 1947	1037E	929
No. 962—Minutes of the Meeting of the Stockholders of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 21, 1947 (excerpts)	1038E	930
No. 964—Minutes of Meeting of Licensees of Sealy, Incorporated, held at Furniture Mart, July 2, 1948 (excerpts)	1040E	931
No. 970—Minutes of the Board of Directors of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 11, 1950 (excerpts)	1044E	932
No. 972—Minutes of Sealy Incorporated Board of Directors Meeting, held at the American Furniture Mart, Chicago, Illinois, November 9, 1951 (excerpts)	1046E	933
No. 973—Minutes of Sealy, Incorporated Stockholders Meeting, held at American Furniture Mart, Chicago, Ill., November 10, 1951	1050E	936
No. 974—Minutes of Sealy, Incorporated New Board of Directors Meeting, held at the American Furniture Mart, Chicago, November 10, 1951 (excerpts)	1051E	938
No. 976—Minutes of Sealy, Incorporated Board of Directors Meeting, held at Conrad Hilton Hotel, Chicago, Ill., November 21, 1952 (excerpts)	1054E	939
No. 978—Sealy, Incorporated Stockholders List	1062E	943
No. 980—List of Sealy, Incorporated Stockholders, September 23, 1955	1063E	945
No. 981—By-Laws of Sealy, Incorporated, November 11, 1955	1064E	946

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 985—List of Sealy, Incorporated Stockholders, September 26, 1956	1074E	957
No. 991-D—Sealy, Inc.—Officers and Directors, 1956-1957	1075E	958
No. 991-E—Sealy, Incorporated 1957 Committees	1076E	960
No. 991-F—Names, addresses and position of Sealy, Incorporated Employees, 1951 To-Date	1077E	962
No. 991-G—Names, Companies and Locations of Sealy Plants, dated October 26, 1956	1079E	965
Volume IV—Exhibits		
No. 991-H—Names and Locations of Sealy, Incorporated Stockholders, by Plants	1081E	967
No. 996—Selected pages of Sealy, Incorporated Report on Examination, Year ended June 30, 1956 (excerpts)	1084E	970
No. 998—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1955 (excerpts)	1090E	974
No. 999—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1954 (excerpts)	1092E	976
No. 999-A—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1953 (excerpts)	1094E	978
No. 1005—Selected pages of Agenda, Sealy, Board of Directors Meeting, April 5-6-7, 1954 (excerpts)	1097E	980
—1954 Committees, Sealy, Incorporated	1098E	980
No. 1011—Annual Stockholders Meeting, Sealy, Incorporated, November 12, 1954	1099E	983
No. 1012—Manufacturer's Contract, dated September 1, 1936 at Pittsburgh, Pa. by Sealy, Incorporated and The Ohio Mattress Co. of Cleveland, Ohio	1110E	997
No. 1013—Contract Agreement between Sealy and the Ohio Mattress Co., dated December 1, 1937 at Pittsburgh, Pa.	1126E	1011
No. 1014—Contract made between Sealy, Incorporated and Made-Wel Bedding Co. Proprietors—Morris Lewis & Samuel Hertz of 43 Aspen St., Passaic, N. J., at Chicago, Ill., May 1, 1941	1129E	1013

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 1015—Contract made between Sealy, Incorporated and the Fred G. Hodges Bedding Co. of Reading, Pa. at Pittsburgh, Pa. on August 1, 1938	1145E	1027
No. 1016—Contract made between Sealy, Incorporated and U.S. Bedding Co. of Shelby County, Memphis, Tenn., November 1, 1936, at Pittsburgh, Pa.	1164E	1046
No. 1017—Contract made between Sealy, Incorporated and The Colorado Mattress Mfg. Co., of Denver, Colo., at Pittsburgh, Pa. on September 12, 1936	1201E	1092
No. 1018—Contract made between Sealy, Inc. and Sealy Mattress Co. of Northern California, place of business, Oakland, California, at Pittsburgh, Pa. on December 15, 1937	1222E	1113
No. 1020—Telegram from J. R. Lawrence to I. A. Wiener, dated December 2, 1948	1256E	1153
—Letter from I. A. Wiener to J. R. Lawrence, dated November 29, 1948	1257E	1153
—Letter from J. R. Lawrence to I. A. Wiener, dated November 24, 1948	1258E	1154
—Telegram from L. Ballard to J. R. Lawrence, dated December 8, 1948	1259E	1155
—Telegram from Sealy Mattress, Allston, Mass. to J. R. Lawrence, dated December 8, 1948	1260E	1155
—Letter from J. R. Lawrence to I. A. Wiener, dated December 15, 1948	1261E	1156
—An Agreement made between Eagle Mattress Co., and Sealy, Inc., on May 1, 1946	1262E	1157
No. 1031—Amendment to the Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, dated October 1947	1270E	1171
No. 1051—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Saralee (Mrs. Bernard) Kegan, on September 27, 1948	1273E	1174
No. 1061—Contract between Sealy, Incorporated and U.S. Bedding Co., of Memphis, Tenn., a corporation of Georgia, on July 1, 1950	1284E	1192

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 1064—Contract between Sealy, Incorporated and David Mfg. Co., of the State of Missouri, with office at Kansas City, Mo., on October 1, 1952	1295E	1211
No. 1065—Contract between Sealy, Incorporated and Peerless Mattress Co., Inc., a corporation of North Carolina, with offices in Lexington, N.C., on November 1, 1952	1314E	1232
No. 1074—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan and Rebecca R. Lichter, on May 15, 1952	1334E	1254
No. 1085—Contract between Sealy, Incorporated and Schmitt & Henry Mfg. Co., of Des Moines, Iowa, whose tradename is Sealy Mattress Co., on September 28, 1948	1353E	1275
No. 1086—Contract between Sealy, Incorporated and Brown Reliable Bedding Co., a corporation of Michigan, on September 1, 1954	1365E	1296
No. 1107—Interrogatories 7, 8 and 9 and answers thereto	1383E	1315
No. 1113—Interrogatories 58 and 62 and answers thereto	1391E	1322
No. 1168—Telegram sent to Marty Rudick from Gloria S. Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 2, 1956	1402E	1332
No. 1169—Letter from Marty Rudick to Mr. Norman Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 27, 1956	1403E	1333
No. 1170—Letter from Norman Bennett to Marty Rudick, Sealy Mattress Co., Baltimore, Md., dated April 21, 1956	1404E	1334
No. 1171—Letter from Marty Rudick to Norman Bennett, dated August 29, 1956	1405E	1335
No. 1172—Letter from Norman Bennett, President to Marty Rudick, dated September 10, 1956	1406E	1336

[fol. 1E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1

Sugar Land, Texas, January 26, 1925

Sealy Convention, Chicago, Illinois

Congress Hotel, January 10th, 11th and 12th

This is a condensed report of the *Sixth Semi-Annual general Convention* of the Sealy Mattress Factories, held at Chicago on *January 10th, 11th and 12th, 1925*, Hotel Congress.

E. E. Edwards, Chairman, presiding.

The *Chair made* ~~a few~~ short *comments on the development* and the *apparent progress* of the Sealy plan. [The first subject of the Convention and perhaps one of the most vital, from the Sealy Manufacturers' point of view, was that of *purchasing* the *patents, trade-marks, good-will* of the present Sealy Mattress Company, owned by the Sugarland Industries.]

Mr. *Thos. H. Cobbs, Attorney*, St. Louis, Mo., who has worked with me the past three years on the Sealy plan, was *present*. We were also honored by the *presence* of *Judge Trimble* of Pittsburgh.

The *stenographic report covers five closely typewritten pages* of that part of the conversation *relating to the incorporation* of the new Company. It is too lengthy to quote here. All details were thoroughly discussed by all present. [According to the terms of the Good-Will Contract, each party who signed it will become a director of the new Company. Each factory signing will be sent a rider to be attached to the present license contract, giving them the option of renewing at the expiration of each ten year period. An *agreement was reached*, giving the newly organized company the *option of calling in stock held by E. E. Edwards* at any time it might deem it advisable to do so. The details of this arrangement, and others, will be incorporated in the minutes of the first meeting of the Board of Directors.]

Our *legal counsel suggested* that an *Executive Committee be appointed* and that from it the first officers be elected. Mr. Haas moved that the Chair appoint the members of the Executive Committee. Mr. Sigmon seconded the motion. The motion carried unanimously.

[After a night's reflection on the requirements of the organization, with a view of the geographical location and invested interests, the *following Executive Committee was named.* J. R. Haas, Memphis; Geo. D. Thornton, Indianapolis; J. P. Chapman, Detroit; J. W. Bowersox, Los Angeles; A. C. Wilcken, St. Paul; H. E. Wolf, Pittsburgh. It was agreed that the *Executive Committee* should *meet four times annually,* the meetings of this Committee to be held in January and July at the regular semi-annual Convention, and in April and October.] It was further *agreed* that the *traveling expenses* of this Committee to *two* of the *meetings would be paid by the Corporation.* The *first meeting* of the *executive committee* will be *held* in *Chicago,* on Friday, *February 13th,* at which time final details of incorporation will be concluded.

At the previous Sealy Conventions, we discussed the *possibility* and *advisability* of *making* some *arrangement to finance dealers on the extended payment plan.*

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[fol. 2E] *Prices* for *1925 came* up *again for careful consideration.* Some of the factories *are securing 25 to 50 cents per mattress* more than the minimum. The *price fixed* by us on the *Sealcrest is $25.90,* but Mr. *Haas* is obtaining *$26.50* and Mr. *Wilckens* of St. Paul *$27.50.* After taking into consideration market conditions and the possible trend, it was decided to leave prices as they are. That is, the prices now in force in the various territories will not be changed until further notice. Any change in prices will be made by the new Executive Committee.

The *advisability of discontinuing our space in the Furniture Mart was considered.*

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The *advisability* of *changing* the *specifications* of the *fillers in the different mattresses* was *discussed.*

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[fol. 3E] What seems to be the trend of price in linters was the next question.

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A *uniform method* of *wrapping* and *packing* the Sealy is very much *desired* by all of us. We had on *display a flat carton* which would be ideal for shipping the Sealy Tuftless.

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[fol. 4E] It was *unanimously voted* that *all labels* for all products be *purchased* through the office of the new organization in order that they may be kept uniform in size, wording and appearance.

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Every factory represented was very much interested in it.

• • • • • • •

On Monday morning, January 12th, at 9:30, *all* of the *representatives met* in the *Sealy space* in the *Furniture Mart to view and purchase stocks of metal beds* that were especially produced and trade-marked under the name of the Sealy Mattress Company.

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[fol. 5E-7E] The *Sealy Bed Spring has been developed and improved* and as shown in January, is superior to any other bed spring offered on the market.

• • • • • • •

[fol. 8E] *At the conclusion of Mr. Haas' talk there was a general discussion about each factory contributing one hundred dollars extra* for the first six months of this year. Finally, with one exception, every factory agreed to contribute an extra hundred dollars, to the treasury of the new corporation. One hundred dollars extra is to be paid by each factory to the corporation, without regard to the amount of royalties earned by it.

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[fol. 9E] *At this point, Mr. Sam Golding* of Golding Bros. *was invited in to talk* to us *about the ticking situation.* Mr. Golding states that his ideas are that ticking will go very much higher. Business is going to be better and prices are going to be higher on all grades of goods. He explained his methods of buying, of manufacturing and serving merchandise to the Sealy factories. He stated that he would put up any amount of money against any competitor, to prove that no one could undersell him on the Sealy plan on a legitimate basis. In order to put over the Sealy plan, he desired to do our work free of cost. That is, that he would do the work for us without any remuneration for the services of Golding Bros. The *convention rejected his offer* and *went on record as favoring the 5% gross profit we are paying him above cost,* out of which he must pay all expenses of his organization for handling the Sealy business. At this point, Mr. *Haas,* made a *motion* that *royalties on all ticking, except the Sealy imprint ticking, be removed.* Mr. Stein *seconded* the motion and it was *carried.* In other words, any concern which has bought ticking from Golding Bros., other than imprinted trade-mark tickings, on which a royalty was paid, will have that royalty returned to it by Golding Bros.

Our whole aim and effort is to be able to purchase ticking from Golding Bros. cheaper through the medium of the Sealy organization than it can be purchased from competitors on any other basis. Golding Bros. are to charge us for the grey goods, the designing, the engraving and printing, plus 5%. So far, we have not found any concern who will take it on a cheaper basis. Mr. Wolfe of Indianapolis suggested that in view of the fact that very few Sealcrest mattresses were being sold, and further that most of the factories had an ample supply of Sealcrest ticking on hand, and, that about 38,000 yards of it is on hand at the mill, ready for delivery to the factories, that the Sealcrest should be used on the Sealy Star mattress. After some discussion it was agreed that the Sealcrest would be used on the Sealy Star mattress and Mr. Wolfe immediately had his Chicago factory make up one and put it on display in the Furniture Mart. It was very pleasing indeed and the white tape certainly sets it off in good contrast to the multitude of colors which are used in the ticking.

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[fol. 10E] The *executive committee gave a great deal of time and thought to the possibility of securing a general manager with headquarters in Chicago.* As our amount of funds are limited, it was decided that we are not in a financial condition to carry out our plans at this time. Mr. *Hertz* has *agreed to go to the Furniture Mart Building each day and to take care of such correspondence which comes up for his attention.* He is making no charge for his services.

In order *to make his letters more effective,* it was *decided to give him the title of General Manager.* It was *further decided* that as soon as our new corporation is formed that we will *make the Lake Trust & Savings Bank of Chicago depository for our savings,* and all royalties are to be remitted direct to them.

These are briefly some of the subjects discussed. There were others, too numerous to mention. Each meeting is more successful than the one proceeding it. The Sugarland Industries are out of it and the factories own the proposition. Let us make this the greatest mattress organization in the world.

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[fols. 11E-12E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 2A

SEALY CORPORATION
Chicago, Illinois
February 13, 1925

Minutes of Organization Meeting

Pursuant to the consent of the incorporators, who are also named as the first Board of Directors, as evidenced by their signatures hereto, the first or organization meeting of the Sealy Corporation was held at the Congress Hotel in Chicago, Illinois, this 13th day of February, 1925.

The meeting was called to order by Mr. E. E. Edwards, and he was elected Chairman. Mr. Thos. H. Cobbs was elected as secretary.

There were present, Mr. E. E. Edwards of Sugarland, Texas, Mr. Wm. Hertz of Chicago, Illinois, Mr. Thos. H. Cobbs of St Louis, Missouri, as the original incorporators, and Mr. J. R. Haas of Memphis, Tennessee, Mr. Geo. D. Thornton of Pittsburgh, Pennsylvania, Mr. J. W. Bowersox of Los Angeles, California, Mr. A. C. Wilcken of St. Paul, Minnesota, and Mr. J. P. Chapman of Detroit, Michigan.

Mr. Cobbs reported that he had procured a charter, or Certificate of Incorporation from the Secretary of State of the State of Illinois, issued on February 7, 1925, and that the original of this certificate had been sent to the Recorder of Deeds of Cook County, Illinois, for record there in accordance with the provisions of the laws of Illinois.

Mr. Cobbs then presented a set of By-Laws, which he had prepared, and after full discussion and consideration, the By-Laws were amended and, on motion duly made and seconded, were unanimously adopted as amended.

On motion duly made and seconded, the Certificate of Incorporation and the By-Laws as amended and adopted, were ordered spread upon the minutes of this meeting as follows, towit:

Certificate of Incorporation follows.

* * * * * * *

[fol. 13E]

Certificate Number 21001

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

Whereas, a Statement of Incorporation, duly signed, acknowledged and verified under oath has been filed in the office of the Secretary of State on the 7th day of February, A. D. 1925, for the organization of the SEALY CORPORATION under and in accordance with the provisions of "AN ACT IN RELATION TO CORPORATION FOR PECUNIARY PROFIT" approved June 28, 1919, and in force July 1, 1919, and all acts amendatory thereof, a copy of which statement is hereto attached:

Now therefore, I, LOUIS L. EMMERSON, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said SEALY CORPORATION is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 7th day of February A. D., 1925, and of the Independence of the United States the one hundred and 49th

Seal of the State of Illinois.
Aug. 26th, 1918

Louis L. Emmerson, Secretary of State.

[fol. 14E]

(This Statement Must be Filed in Duplicate)

STATE OF ILLINOIS,
Cook County, ss:

To LOUIS L. EMMERSON, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois.

Name	Address Number Street	City	State
E. E. Edwards	Sugarland, Texas		
Wm. Hertz	646 North Michigan Avenue	Chicago,	Ill.
Thos. H. Cobbs	506 Olive St.,	St. Louis,	Mo.

propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to-wit:

1. The name of such corporation is SEALY CORPORATION.

2. The object for which it is formed is to acquire, own, hold, use, buy, sell, lease, mortgage and otherwise deal in patents, trademarks, copy rights, trade-names, labels, brands and all rights and interests therein; to license others to use, make, manufacture and sell merchandise under patents, trademarks, copyrights, trade-names, labels and brands; to make, manufacture, buy, sell and deal in beds, bed springs, mattresses, and bedding of all kinds; to make, manufacture, buy, sell and trade in goods, wares and merchandise of all kinds; to acquire, own, make, grant, carry out and operate under licenses, license contracts, and all other rights under patents, tradenames, and brands; to advertise patents, trademarks, copyrights, trade-names, labels and brands; to advertise beds, bed springs, mattresses, bedding and merchandise of all kinds, and to sell and cooperate with others in the selling of merchandise under patents, trade-marks, copyrights, trade-names, labels and brands, and in any and all other ways.

3. The duration of the corporation is perpetual.

4. The location of the principal office is 666 Lake Shore Drive, Furniture Mart Bldg., Chicago, County of Cook, State of Illinois.

5. The total authorized capital stock is 400 shares of common without par value.

6. The amount of each share having a par value is none. [fol. 15E] 7. The number of shares having a par value is none.

8. The number of shares of no par value is 400.

9. The name and address of the subscribers to the capital stock, and the amount subscribed and paid in by each, are as follows:

Name	Number Street City State Address	No. of Shares	Am't. sub	Am't pd. for
E. E. Edwards	Sugarland, Texas	398	$1,990.00	$1,990.00
Wm. Hertz	646 N. Michigan, Chicago, Ill.	1	5.00	5.00
Thos. H. Cobbs	506 Olive St., St. Louis, Mo.	1	5.00	5.00
	Total	400	$2,000.00	$2,000.00

11. Amount of capital stock which it is proposed to issue at once:

(a) On shares having no par value, 400 shares at $5.00 — $2,000.00

(b) On shares having a par value of — Preferred — none; Common — none

12. Amount of capital stock actually paid in:

(a) On shares having no par value, — $2,000.00

(b) On shares having a par value of — Preferred — none; Common — none

13. Amount of capital stock paid in cash is — $2,000.00

14. Capital stock paid in property appraised as follows: — None — None

15. The location and a general description of such property is as follows: — None

16. The management of the corporation shall be vested in three directors.

17. The name and address of the first Board of Directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

Name	Address No. St. City State	Term for which elected
E. E. Edwards	Sugarland, Texas	until first annual meeting
Wm. Hertz	646 No. Michigan Ave. Chicago, Ill.	until first annual meeting
Thos. H. Cobbs	506 Olive St., St. Louis, Mo.	

18. Subject to the conditions and limitations prescribed by "The General Corporation Act" of Illinois, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue and be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount, and divided into shares with a par value, or without a par value, and to divide such capital stock into such classes, with such [fol. 16E] preferences, rights, values and interests as may be provided in the articles of incorporation, or any amendment thereof;

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell convey or transfer the same; and to acquire and to own real property improved or unimproved, for the purpose of providing homes for its employes or aiding its employes to acquire and own homes and to improve, lease, mortgage, contract to sell, convey the same, and to loan money to its employes for such purpose upon such terms as may be agreed upon;

To own, purchase or otherwise acquire, whether in exchange for the issuance of its own stock, bonds or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign;

To borrow money at such rate of interest as the corpora-

tion may determine without regard to or restrictions under any usury law of this state and to mortgage or pledge its property, both real and personal, to secure their payment thereof;

To elect officers, appoint agents, define their duties and fix their compensation;

To lease, exchange or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital stock of the corporation at any annual meeting or at any special meeting called for that purpose;

To make by-laws not inconsistent with the laws of this state for the administration of the business and interests of such corporation;

To conduct business in this State, or other states, the District of Columbia, the territories, possessions, and dependencies of the United States and in foreign countries and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of the corporation;

In time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities and to loan money to the State or federal government for war purposes;

To cease doing business and to surrender its charter;

To have and to exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed.

19. An estimate of the per cent of tangible property of the corporation to be used in Illinois for the following year is 100 per cent.

20. An estimate of the per cent of the business of the corporation which will be transacted at or from places of business in Illinois for the following year is 100 per cent.

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

Chicago, Illinois, only.

[Vol. 17E]

E. E. Edwards,
Wm. Hertz,
Thos. H. Cobbs,
Incorporators.

STATE OF MISSOURI,
CITY OF ST. LOUIS, ss:

I, Katherine Eidmann, a Notary Public in and for the City and State aforesaid, do hereby certify that on the 3rd day of February, 1925, personally appeared before me Thos. H. Cobbs, to me personally known to be the same person who executed the foregoing, and acknowledged that he executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by him are true in substance and in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

[Seal]

My commission expires September 30, 1925.

Katherine Eidmann, Notary Public.

Oath and Acknowledgment

STATE OF ILLINOIS,
Cook County, ss:

I, James H. Corey, a Notary Public in and for the county and State aforesaid, do hereby certify that on the 27th day of January A. D., 1925, personally appeared before me ——— E. E. Edwards and Wm. Hertz ——— ——— to me personally known to be the same persons who executed the foregoing and severally acknowl-

edged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

[Seal]

James H. Corey, Notary Public.

STATE OF ILLINOIS,
County of Cook, ss: No. 8775303

[fol. 18E]

Filed for Record, 1925 Feb. 16 A. M. 9 43, and recorded in Book 360 of corp. of Records, Page 161(?)

Joseph F. Haas, Recorder.

By-Laws

Article I

Stockholders

Section 1. Place of Holding Meetings.—All meetings of the stockholders shall be held at the office of the company in the City of Chicago, in the State of Illinois.

Section 2. Voting.—Only holders of Common Stock shall be entitled to vote at any meeting of stockholders but they may vote either in person or by proxy appointed by instrument in writing subscribed by such stockholder or by his duly authorized attorney. Each stockholder shall be entitled to one vote for each share of Common Stock registered in his name on the books of the company, except that stock held by any stockholders for others who really own same shall not be voted except as directed by the parties for whom it is held; provided, however, that after the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of the company within twenty days next preceding such election.

Section 3. Quorum.—Any number of stockholders together holding at least fifty-one per cent of the Common Stock issued and outstanding, who shall be present in person, or represented by proxy, at any meeting duly called, shall constitute a quorum for the transaction of business.

Section 4. Adjournment of Meetings.—If less than a quorum shall be in attendance at the time for which the meeting shall have been called, the meeting may, after the lapse of at least half an hour, be adjourned from time to time by a majority vote of the stockholders present or represented and entitled to vote, for a period not exceeding one month at any one time, without any notice other than

by announcement at the meeting, until a quorum shall attend. Any meeting at which a quorum is present may also be adjourned, in like manner, for such time, or upon such call as may be determined by vote. At any adjourned meeting at which a quorum shall attend any business may be transacted which might have been transacted if the meeting had been held as originally called.

Section 5. Annual Election of Directors.—The annual meeting of the holders of Common Stock for the election [fol. 19E] of directors and the transaction of other business shall be held during the month of January of each year, at such time and place as may be determined by the Executive Committee at the regular meeting of that Committee next before said annual meeting. At each annual meeting the holders of Common Stock shall elect the members of the Board of Directors, and they may transact such other corporate business as shall be stated in the notice of the meeting.

Section 6. Special Meetings: How Called.—Special meetings of the stockholders for any purpose or purposes may be called by the President, and shall be called upon a requisition in writing therefor, stating the purpose or purposes thereof, delivered to the President or Secretary, signed by a majority of the directors or by fifty-one percent in interest of the stockholders, or by resolution of the directors.

Section 7. Manner of Voting at Stockholders' Meetings. —At all meetings of stockholders all questions, except as otherwise expressly provided by statute or by these by-laws, shall be determined by a majority vote of the Common Stockholders present in person or represented by proxy; provided, however, that any qualified voter may demand a stock vote, and in that case, such stock vote shall immediately be taken. Except as otherwise expressly provided by statute or by these by-laws, all voting shall be viva voce, except that a stock vote shall be by ballot, each of which shall state the name of the stockholders voting and the number of shares owned and voted by him, and if such ballot be cast by proxy, it shall also state the name of such proxy.

Section 8. Notice of Stockholders' Meetings.—Written notice, stating the place and time of the meeting, and the

general nature of the business to be considered, shall be given to each Common Stockholder at his last known post-office address, at least fifteen (15) days before the meeting in the case of an annual meeting, and fifteen (15) days before the meeting in the case of any special meeting.

No business other than that stated in the notice shall be transacted at any meeting without the consent of a majority of all of the Common Stockholders or Stockholders holding a majority of the outstanding Common Stock.

Article II

Directors

Section 1. First or Annual Meeting.—The newly-elected directors may, without notice, hold their first or annual meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent in writing of the directors; or said meeting may be held on call and notice, the same as a special meeting.

Section 2. Election of Officers.—At such meeting the directors shall elect a president and a vice-president from [folio 20E] their number, and a treasurer and a secretary, who need not be directors. Such officers shall hold office until the next annual election of officers and until their successors are elected and qualify. In case such officers shall not be elected at such first meeting, they may be chosen at any subsequent meeting of directors called for the purpose.

Section 3. Regular Meetings.—Regular meetings of the directors may be held on fifteen days notice at such places and times as shall be determined from time to time by resolution of the directors.

Section 4. Special Meetings; How Called; Notice.—Special meetings of the Board may be called by the President, or by the secretary on the written request of any five directors, on fifteen days' notice to each director.

Section 5. Number and Quorum.—The number of directors shall be determined by the Charter and amendments thereto. A majority of the directors elected and serving

at the time shall constitute a quorum for the transaction of business. Directors need not be stockholders.

Section 6. Place of Meeting.—The directors may hold their meetings outside of the State of Illinois, a such place or places as they may from time to time by resolution determine.

Section 7. General Powers of Directors.—The Board of Directors shall have the management of the business of the company, and, subject to the restrictions imposed by law, by the Certificate of Incorporation, or by these By-Laws, may exercise all the powers of the corporation, and may delegate that authority to an executive committee.

Section 8. Compensation of Directors.—Directors shall not receive any stated salary for their services as directors, but by resolution of the Board a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the company in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

Article III

Executive Committee

Section 1. How Appointed.—The directors may appoint from their number an executive committee consisting of seven (7) members. The executive committee may make its own rules of procedure and shall meet where and as provided by such rules, or by a resolution of the directors. A Majority shall constitute a quorum, and in every case the affirmative vote of the majority of the members of the committee present shall be necessary to the adoption of any resolution.

Section 2. Powers.—During the intervals between the [fol. 21E] meetings of the directors, the executive committee shall have and may exercise all the powers of the directors in the management of the business and affairs of the company, including power to authorize the seal of the company to be affixed to all papers which may require it, in such manner as such committee shall deem best for the interests of the company, in all cases in which specific directions shall not have been given by the directors.

Article IV

Officers

Section 1. The officers of the company, in addition to the directors, shall be a President, a Vice-President, a Secretary and a Treasurer, and such others as the Board of Directors may from time to time create and appoint. One person may hold the offices of Secretary and Treasurer, or Vice-President and Secretary, or Vice-President and Treasurer.

Section 2. President.—The President shall, when present, preside at all meetings of the directors, and act as temporary chairman at, and call to order all meetings of the stockholders; and he shall have power to call special meetings of the stockholders and directors for any purpose or purposes, appoint and discharge, subject to the approval of the Executive Committee, employes and agents of the company and fix their compensation, make and sign such contracts and agreements in the name and behalf of the company as have been approved by the Executive Committee, and while the directors and the Executive Committee are not in session he shall have general management and control of the business and affairs of the company; he shall see that the books, reports, statements and certificates required by the statute under which this company is organized or any other laws applicable thereto are properly kept, made and filed according to law; and he shall generally do and perform all acts incident to the office of President, or which are authorized or required by law.

Section 3. Vice-President.—The Vice President shall be vested with all the powers and shall perform all the duties of the President in the absence or disability of the latter, unless or until the directors shall otherwise determine. He shall have such other powers and perform such other duties as shall be prescribed by the directors, or the Executive Committee.

Section 4. Secretary.—The secretary shall give, or cause to be given, notice of all meetings of stockholders and directors, and all other notices required by law, or by these By-Laws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person there-

unto directed by the President, or by the directors or stockholders upon whose requisition the meeting is called as provided in these By-Laws. He shall record all the proceedings of the meetings of the corporation and of the directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the directors or the President. He shall have the custody of the seal of the company and shall affix the same to all instruments requiring it, when authorized by the directors, the Executive Committee, or the President, and [fol. 22E] attest the same.

Section 5. Treasurer.—The Treasurer shall have the custody of all funds, securities, evidences of indebtedness and other valuable documents of the company; he shall receive and give or cause to be given receipts and acquittances for moneys paid in on account of the company and shall pay out of the funds on hand all just debts of the company of whatever nature upon maturity of the same; he shall enter or cause to be entered in the books of the company to be kept for that purpose, full and accurate accounts of all moneys received and paid out on account of the company, and, whenever required by the President, the Executive Committee, or the directors, he shall render a statement of his cash accounts; he shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the company; he shall, unless otherwise determined by the directors or the Executive Committee, have charge of the original stock books, transfer books and stock ledgers and act as transfer agent in respect of the stock and securities of the company; and he shall perform all of the other duties incident to the office of Treasurer. He shall give the company a bond for the faithful discharge of his duties in such amount and with such surety as the Board of Directors or Executive Committee shall prescribe.

Article V

Resignations: Filling of Vacancies

Section 1. Resignations.—Any director, member of a committee or other officer may resign at any time. Such resignation shall be made in writing, and shall take effect

at the time specified therein, and if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 2. Filling Vacancies.—If the office of any director, member of a committee or other officer becomes vacant, the directors, or members of the Executive Committee, remaining in office, although less than a quorum, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his successor shall be duly chosen.

Article VI

Capital Stock

Section 1. Issue of Certificates of Stock.—The President shall cause to be issued to each stockholder one or more certificates, under the seal of the corporation, signed by the President or Vice-President, and the Treasurer or Secretary certifying the number of shares owned by him in the company.

Section 2. Transfer of Shares.—The shares of stock of the company shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer [fol. 23E] the old certificates shall be surrendered to the company by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the directors or executive committee may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A record shall be made of each transfer.

Section 3. Lien for Debts of Holder.—This company shall and does reserve to itself, upon all stock issued to, or held by a stockholder, a lien as security for the payment of any debts due or to become due to this company from said stockholder or from the party or parties or corporation for whom the stockholder holds said stock, and all stock is issued and shall be held subject to this lien which shall have preference over all other liens, and no transfer of any stock, either by action of the party or of law, shall be effectual to defeat this lien in favor of the company and

no transfer of stock shall be made or allowed on the books of the company until all debts due from the holder and the owner of the stock are paid.

Section 4. Pledge or sale of Common Stock.—Each holder of common stock in this company, for himself, and for his heirs and assigns, shall agree, and by accepting a certificate of a common stock in this company, does agree with the company, with the executive committee and with each and every other stockholder in the company, that he will never pledge, encumber or assign any of the common stock of this company, or any interest therein under any circumstances whatsoever, and that no pledgee or assignee of said stock shall acquire any interest therein in any manner whatsoever, and does further agree not to sell, assign, dispose of or transfer any of the common stock of this company except in the following manner, and upon the following conditions:—

If a stockholder desires to sell any of his common stock in the company, he shall first give six months written notice, to each member of the Executive Committee then in office, of his desire to sell and of the price at which he is willing to sell said stock, which selling price shall not exceed $1125.00 per share nor be less than $375.00 per share, and in which said notice he shall give to the executive committee the right and privilege of purchasing said stock at said price at any time within said six months from the date of mailing said notice. If during said six months, the Executive Committee shall decide to purchase said stock at the price named, or if the Executive Committee and the owner of said stock can agree upon a different price, then said stock shall be sold, delivered and transferred to the Executive Committee as trustee for all other stockholders. If the Executive Committee shall express to said stockholder a desire to purchase said stock, but cannot agree with said stockholder upon the price to be paid for same, then the price and value of said stock shall be determined, between the said minimum and maximum prices, by arbitration. For said arbitration, each party shall, within said six months, appoint one arbitrator, and these two arbitrators shall select a third arbitrator. These three arbitrators shall determine the price and value of said stock, and the decision of any two of said arbitrators

as to the price and value of said stock shall be binding upon the said stockholder and the Executive Committee, and the sale shall be closed on the basis of the price or [fol. 24E] value thus fixed. If after the expiration of said six months the Executive Committee has refused to purchase said stock, at the price named in said notice, and no steps have been taken to determine the price at which said stock shall be purchased by the Executive Committee, then and in that event only shall the stockholder be at liberty to sell, assign, dispose of or transfer any of the common stock of this company to any one whomsoever. No common stock shall be transferred on the books of the company until the above provisions have been fully complied with.

The Executive Committee may, however, give permission by proper action to pledge, sell, assign or transfer any of the common stock without compliance with the above provisions.

Section 5. Dividends.—The directors may declare dividends from the surplus or net profits arising from the business of the corporation as and when they deem expedient. Before declaring any dividend there may be reserved out of the accumulated profits such sum or sums as the directors from time to time in their discretion think proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends, or for such other purposes as the directors shall think conductive to the interests of the company. The directors may close the transfer books for not exceeding thirty (30) days next preceding the day appointed for the payment of any dividend.

Article VII

Miscellaneous Provisions

Section 1. Fiscal Year.—The fiscal year of the company shall be the calendar year.

Section 2. Notice and Waiver of Notice.—Whenever any notice is required by these By-Laws to be given, personal notice not meant unless expressly so stated; and any notice so required shall be deemed to be sufficient if given by registered mail, addressed to the person entitled thereto at his last known postoffice address, and such notice shall

be deemed to have been given on the day of such mailing. Any notice required to be given under these By-Laws may be waived by the person entitled thereto.

Article VIII

Amendments

Section 1.. Amendment of By-Laws.—The stockholders, by the affirmative vote of the holders of a majority of the stock issued and outstanding, or the directors, by the affirmative vote of a majority of the directors elected and acting, may at any meeting, provided the substance of the proposed amendment shall have been stated in the notice of the meeting, amend or alter any of these By-Laws. If any amendment shall be proposed in writing and signed by any two directors, the same shall be included in the notice of the next meeting of directors or stockholders as the case may be. A copy of such amended By-Laws shall [fol. 25E] be sent to each stockholder within ten days after the adoption of the same.

Mr. Cobbs then presented the form of certificate for common stock and on motion duly made and seconded the same was unanimously approved and he was authorized and directed to have certificate printed and prepared for issuance.

On motion duly made and seconded it was unanimously voted to increase the number of directors of the corporation from three to thirty and to amend Article 16 of the statement for the organization of the corporation to read as follows:—

"16. The managemen of the corporation shall be vested in thirty directors."

The officers of the corporation were authorized and directed to file the necessary affidavits and statements for making this change in the number of directors.

Mr. Edwards announced that in order to incorporate under the laws of Illinois, it was necessary for three incorporators to sign the statement and subscribe for the stock and be named as directors; that he, Mr. Hertz and Mr. Cobbs had signed the statement and secured the charter;

that in doing so he subscribed for 298 shares of the common capital stock, doing this in accordance with the contract with various licensed factories; that in order to carry out that contract he had authorized the issuance of one share of stock, from the stock subscribed for by him, to a representative of each licensed factory as they were interested in the organization of the corporation and entitled to a share of stock and to participate in the management and benefits of the company.

On motion duly made and seconded it was unanimously voted, therefore, to issue from the stock subscribed for by Mr. Edwards, one share to each of the following named gentlemen:—

Mr. J. R. Haas, Memphis, Tennessee.
Mr. L. C. Haas, Kansas City, Missouri.
Mr E. C. Haas, Atlanta, Georgia.
Mr. Fred Goodman, New Orleans, La.
Mr. Geo. D. Thornton, Indianapolis, Ind.
Mr. G. W. Jacoby, St. Louis, Mo.
Mr. H. M. Wolfe, Chicago, Illinois.
Mr. H. E. Wolfe, Pittsburgh, Pa.
Mr. J. W. Bowersox, Los Angeles, Calif.
Mr. A. W. Carlson, San Francisco, Calif.
Mr A. C. Wilcken, St. Paul, Minn.
Mr. Frank Wuliger, Cleveland, Ohio.
Mr. C. T. Sigmon, Oklahoma City, Okla.
Mr. A. J. Ortmeyer, Little Rock, Arkansas.
Mr. M. Stein, Denver, Colorado.
Mr. Chas. V. Worthington, Salt Lake City, Utah.
Mr. H. F. Bonesteele, Tigard, Oregon.
Mr. J. P. Chapman, Detroit, Mich.
Mr. J. C. Egan, Buffalo, N. Y.

[fol. 26E] On motion duly made and seconded, it was also unanimously voted to elect each of the above nineteen gentlemen as a member of the board of directors, who together with the three already elected, should constitute the board of directors until others were elected.

The chairman then announced that the election of officers for the following year was in order. And on motion duly made and seconded, the following officers were unanimously elected as officers for the ensuing year:

Mr. E. E. Edwards, as President,
Mr. J. R. Haas, as Vice-President,
Mr. G. D. Thornton, as Treasurer,
Mr. H. E. Wolf, as Secretary.

On motion duly made and seconded, the offices of General Manager, Business Counsel and Assistant Treasurer were created, and Mr. Wm. Hertz was unanimously elected as General Manager, Business Counsel and Assistant Treasurer for the corporation for the ensuing year.

On motion duly made and seconded the offices of Legal Counsel and Assistant Secretary were created and Mr. Thos. M. Cobbs was unanimously elected as Legal Counsel and Assistant Secretary for the corporation for the ensuing year.

The chairman announced the election of members of the Executive Committee to be in order and on motion duly made and seconded the following were unanimously elected as members of the Executive Committee for the ensuing year:—

Mr. E. E. Edwards, Sugar Land, Texas, President,
Mr. J. H. Haas, Memphis, Tenn., Vice-President,
Mr. Geo. D. Thornton, Indianapolis, Ind., Treasurer,
Mr. H. E. Wolf, Pittsburgh, Pa., Secretary,
Mr. J. W. Bowersox, Los Angeles, Calif., Member,
Mr. A. C. Wilcken, St. Paul, Minn., Member,
Mr. J. P. Chapman, Detroit, Mich., Member.

Mr. Edwards reported that the contract for the organization of this corporation had been signed by twenty licensed factories and that more were considering the proposition.

Mr. Edwards also reported that he had elected to exercise his option to purchase the patents, trademarks, trade names, license contracts and other assets of the Sealy

Mattress Company from the Sugar Land Industries for $150,000.00 and had directed the transfer of said assets to the Corporation, and that the Sugar Land Industries had agreed to accept six (6) promissory notes of this corporation for $25,000.00 each, bearing interest at the rate of 6% per annum, payable in one, two, three, four, five and six years from January 1st, 1925, and secured by pledge of the Bill of Sale for said assets and rights and by an assignment of all of said assets and rights as collateral to said notes.

On motion duly made and seconded the President was unanimously authorized and directed to consummate the purchase of said patents, trademarks, tradenames, good [fol. 27E] will, license contracts and other assets from Sugar Land Industries, taking over the same as of January 1st, 1925, and adjusting royalties to that date, and to execute and deliver, for the purchase of said assets, six promissory notes for $25,000.00 each, bearing interest at 6% per annum, payable in one, two, three, four, five and six years, from January 1st, 1925, and to secure said notes by pledging the Bill of Sale for said assets and assigning all of said assets to Sugar Land Industries as collateral security for the payment of each and all of said notes.

On motion duly made and seconded, it was ordered that copies of the Option Contract, the Contract for the Organization of the Company, the Bill of Sale to be given to this company, and the Assignment of same as collateral and one Collateral Promissory Note were entered on the records of this meeting as follows:

OPTION CONTRACT

THIS AGREEMENT MADE and enter into this — day of ————, 1923, by and between the Sugar Land Industries, a trust estate which conducts its mattress department under the name of Sealy Mattress Company, and which is composed of and managed by I. H. Kempner, D. W. Kempner, W. T. Eldridge, Jr., and G. D. Ulrich, trustees, acting under a declaration of trust dated January 1st, 1919, a copy of which, for the information of all concerned, is deposited with the Texas Bank & Trust Company of Galveston, Texas, hereinafter called First Party and E. E.

Edwards, of Sugar Land, Texas, hereinafter called Second Party, Witnesseth:—

Whereas, the First Party is the Owner of the trade name of "Sealy Mattress Company," and various patents, trademarks, copyrights, trade names, and good will connected with the business conducted by the First Party under the name of Sealy Mattress Company, and including trademarks, registered July 6, 1885, and March 29, 1892, numbered respectively 11,850 and 20,913, together with other such names, marks and rights, and

Whereas, the First Party has made and entered into various and numerour license contracts with the manufacturers of mattresses in different parts of United States, giving to said manufacturers the license and right to manufacture and sell mattresses under said trade names and trademarks, and binding said manufacturers to pay certain royalties on all mattresses manufactured and sold under said license contracts, and

Whereas, the First Party is desirous of selling to the Second Party, and the Second Party is desirous of buying from the First Party, all of said property, assets, rights and license contracts of the First Party connected with its business done under the name of Seaiy Mattress Company, and all of the property, assets and rights of said department of business, excepting the machinery, equipment, supplies and materials used in connection with the mattress manufacturing plants of the First Party and the cash, accounts and bills receivable of said business, belonging to the First Party.

[fol. 28E] Now, Therefore, in consideration of the premises, and of the sum of $————, paid by the Second Party to the First Party, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants herein, it is agreed by and between the parties hereto as follows, towit: —

First: The First Party has given, and does hereby give and grant to the Second Party, and to his assigns, the right and option to purchase the trade name of Sealy Mattress Company, and all of the patents, trademarks, copyrights, trade names, good will and assets, rights and benefits, belonging to, or connected with the mattress

department of the First Party, excepting only the machinery, equipment, supplies, and materials, cash and accounts receivable and bills receivable belonging to said department, but including all other assets and rights belonging to, or connected with said department, and including all license contracts and royalties and rights thereunder, made between the First Party and the mattress manufacturers throughout the United States, and also including the exclusive right to use the name or names and advertising designs and matter used by First Party in connection with its mattress department, at any time on or before one year after this date, at and for the sum of $150,000.00, to be paid in cash, or in approved notes, and securities, on or before the expiration of said one year.

Second: In case the Seecond Party shall elect to purchase said assets and rights under and in accordance with this contract, then the First Party agrees and binds itself as follows:—

(a) To sell, assign and transfer to Second Party or on his order, by proper instruments in writing, all of the said assets and rights and the right to use the name or names and advertising designs and matters used by the First Party in connection with its mattress department.

(b) To warrant and defend the title to said assets and rights.

(c) Not to engage in the mattress business, either directly or indirectly in any part of the United States for a period of ten (10) years, and not to permit any other person, persons, association or corporation to engage in the mattress business in Sugar Land, Texas, for a period of ten (10) years after the consummation of the sale of said property.

(d) To warrant and defend the title to the assets so sold and to execute any and all other papers and documents which may be needful in the transfer of said assets and rights including the assignment of all of said license contracts.

In Witness Whereof the parties hereto, have hereunto and unto a duplicate copy hereof, set their hands and seals, this — day of ————, 1923.

[fol. 29E] Sugar Land Industries, By ——, ——, First Party. By ——, ——, Second Party.

CONTRACT ON ORGANIZATION OF SEALY MATTRESS CORPORATION

THIS CONTRACT MADE AND ENTERED INTO THIS — day of ————, 1924, by, between and among E. E. EDWARDS of Sugar Land, Texas, hereinafter called First Party, and ————————, a corporation, organized under the laws of ————————, hereinafter called Second Party, and ———————— hereinafter called Third Party, Witnesseth:

Whereas, The Sealy Mattress Company, the mattress department of The Sugar Land Industries, a trust estate, has heretofore given to the Second Party, a license contract for the manufacture and sale of mattresses under the patents, trademarks and tradename of Sealy Mattress Company, and

Whereas, the Second Party is now operating under said license contract and is desirous to continue to operate under same, and

Whereas, First Party has an option from the said Sugar Land Industries for the purchase of the patents, trademarks, copyrights, trade-names, good will and other assets, rights and benefits of the Sealy Mattress Company, including the said license contract to Second Party and to other mattress manufacturers, at and for the sum of $150,000.00 at anytime on or before August 1, 1924, and

Whereas, First Party and his associates have for a period of approximately seven (7) years been working on the plans for the organization of The Sealy Mattress Corporation, or some other corporation to take over the said patents, trademarks, trade-names, copyrights, good will, assets and license contracts, so that the same could be advertised and used for the benefit of all those manufacturers who hold license contracts, for the manufacture and sale of Sealy mattresses, and

Whereas, the Third Parties are stockholders and officers in the Second Party, and are interested in the continuation of said license contract to Second Party, and in the organization of the Sealy Mattress Corporation.

Now Therefore, in consideration of the premises and of the mutual covenants herein, it is agreed by, between and among the parties hereto, as follows, to-wit:

[fol. 30E] First: Second Party and Third Parties agree that, if First Party, or a corporation organized by him shall purchase said patent, trade-marks, copyrights, assets and license contracts, from the Sugar Land Industries, under and in accordance with said option, or any renewal or extension thereof, then and in that event, they will, and do hereby consent to the assignment of said license contract with The Sugar Land Industries held by Second Party, and do hereby agree to extend and comply with said license contract for a period of six (6) years from and after January 1st, 1925, without the privilege of changing or cancelling any of the terms and provisions of said contract.

Second: First Party agrees to use his best efforts to organize a corporation to be known as the Sealy Mattress Corporation, or some other suitable name, with resources sufficient to purchase and acquire the property covered by said option contract in accordance therewith, and further agrees to accept for his services in working out the plans for said organization, and promoting the same, one-fourth (¼) of the common capital stock of said Company for himself and his associates, and further agrees to distribute the other three-fourths (¾) of the common capital stock of said Company for the benefit of those who sign this contract and like contracts, as hereinafter provided.

Third: It is mutually agreed and understood that the said Sealy Mattress Corporation, when organized, may issue and sell preferred stock in an amount sufficient to raise the funds necessary to purchase said assets under said option, and for operating capital, or it may execute and deliver such promissory notes as may be necessary for the purchase of said assets under said option, or any extension thereof, and may pledge said assets as security for the payment of said notes.

It is also understood and agreed that the corporation to be formed as aforesaid will alone be responsible for the payment of said notes, and that neither First Party, Second Party nor Third Party shall be obligated for same. The obligations of the parties hereto shall be limited to the provisions of this contract.

Fourth: It is further mutually agreed that one share of the common stock of said corporation, when organized, shall be issued to First Party, one share to Thos. H. Cobbs, his attorney, and one share to each licensee who shall execute a contract like this one. If said licensee is not lawfully qualified to receive and hold said stock, then same shall be issued to some individual officer of said licensee designated by said licensee. The remainder of the said common capital stock shall be placed in escrow with the Texas Bank & Trust Company of Galveston, Texas, or some other suitable institution, to be held by it as security for the payment of the balance of the purchase price of said assets under said option, and to insure the performance of this contract. In case contracts like this one shall be executed after said stock has been placed in escrow, then one share for each such contract shall be released from escrow, and issued and delivered to the licensee or the individual officer of licensee designated by the licensee signing said contract.

As soon as all of the purchase price for said assets has been paid and liquidated, then the said common capital [fol. 31E] stock shall be released from escrow and distributed as follows:

One-fourth of said stock shall be issued and delivered to First Party, and his associates, as he may direct.

Three-fourths of said stock shall be distributed among the parties who have signed contracts like this one, on a pro-rata basis in accordance with the total royalties actually paid by said licensees on said royalty contracts between the first day of January, 1925, and the date on which said distribution is made. If said licensees, being corporations, are not competent to receive said stock, then the part of stock to be issued to said licensees may be issued to such officer or officers of said licensees as said licensees may designate.

Fifth: It is further agreed and understood by and between the parties hereto that in so far as they can lawfully control it, First Party shall be elected as President of the said corporation to be formed, and shall be re-elected to such office until such time as the full indebtedness for the purchase price of said asset has been liquidated, and Sec-

ond Party and Third Party agree and bind themselves to vote for the election of First Party as President of said corporation until all of said indebtedness has been liquidated. As President, First Party shall have general management and control of said business of said corporation, and shall receive compensation on some fair basis, to be fixed by the Board of Directors of said corporation.

Sixth: It is further mutually agreed that this contract shall not become binding and effective until at least twenty (20) similar contracts have been entered into between the First Party and Sealy Licensed factories.

In Witness Whereof, the Parties hereto have executed this, and a duplicate copy hereof, this day and year first above written.

——, ——, First Party. ——, ——, Second Party.
——, ——, Third Parties.

[fol. 32E] Bill of Sale or Assignment Covering Patents, Trade-Marks, Etc.

Whereas, the undersigned, the Sugar Land Industries, a trust estate which has heretofore conducted its mattress and bedding department under the name of Sealy Mattress Company, and which is composed of and managed by I. H. Kempner, W. D. Kempner, W. T. Eldridge, Jr., and G. D. Ulrich, as Trustees, acting under a declaration of trust dated January 1, 1919, and deposited with the Texas Bank & Trust Company of Galveston, Texas, did heretofore give to E. E. Edwards, of Sugar Land, Taxas, an option contract to purchase the trade name of the Sealy Mattress Company and patents, trade-marks, copyrights, trade-names and the good-will and other assets connected with business of the Sealy Mattress Company, which said option contract is hereby referred to and made a part of this Bill of Sale, and

Whereas, the said E. E. Edwards has decided to exercise said option and to purchase said assets, and

Whereas, the said E. E. Edwards and others have organized a corporation under the laws of the State of Illinois, known as the Sealy Corporation, and

Whereas, the said E. E. Edwards has authorized and directed the undersigned to transfer, assign, convey and deliver the said property, assets and rights to the Said Sealy Corporation.

Now Therefore, in consideration of the premises, and in consideration of the sum of one hundred and fifty thousand ($150,000.00) Dollars to us paid, the receipt of which is hereby acknowledged, we hereby sell, assign, transfer and deliver to the Sealy Corporation,

1st. The trade names of "Sealy Mattress Company" and the exclusive right to use it and all parts of it in any and all forms.

2nd. All of the patents, trade-marks, copyrights, tradenames, labels, good-will, assets, rights and benefits belonging to us or to the Sealy Mattress Company, and formerly used in connection with our Mattress or Bedding Department, excepting only the machinery, equipment, supplies and materials, cash and accounts receivable and bills receivable belonging to said Department, but especially including the trademarks registered July 6, 1885, and March 29, 1892, numbered respectively 11,850 and 20,913, together with all other patents, trademarks, copyrights, tradenames, labels and rights belonging to or used in connection with said business.

3rd. Also all of the license contracts made by the undersigned with various mattress manufacturers in various parts of the United States, and all royalties and rights under said contracts from January 1, 1925.

4th. Also the exclusive right to the use of the said name or names, and rights to the use of the advertising designs and advertising matter used by us heretofore in connection with said Mattress Department.

We further warrant and agree to defend the title to [fol. 33E] each and all of said assets and rights and also agree to execute any and all papers, assignments and other documents which may be needful to completely transfer and assign any and all of said assets, rights and contracts to the Sealy Corporation, its successors or assigns.

And we further agree not to engage in the mattress or bedding business either directly or indirectly in any part of the United States for a period of ten (10) years from

this date, and not to permit any other person or persons, association or corporation to engage in the mattress business or bedding business in Sugar Land, Texas, for a pereiod of ten (10) years from this date, without the written consent of the said E. E. Edwards and the said Sealy Corporation, its successors or assigns.

No attempt will be made to assign any of the assets, franchises, goodwill, rights and benefits assigned and transferred by said bill of sale to the Sealy Corporation until the notes herein recited have been fully paid and liquidated.

This bill of sale is made as of January 1, 1925 and is executed in duplicate.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this the 30th day of March, 1925.

Sugar Land Industries, By I. H. Kempner, D. W. Kempner, W. T. Eldridge Jr., E. D. Ulrich, Trustees.

STATE OF TEXAS,
County of, ss:

Before me, a notary public, within and for the county and state aforesaid, personally appeared I. H. Kempner, D. W. Kempner, W. T. Eldridge, Jr., and G. D. Ulrich, to me known to be persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they had executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30th day of March, A. D. 1925.

My commission expires on the 1st day of June, 1925.

L. H. Dunn, Notary Public.

[Seal]

[fol. 34E] ASSIGNMENT AND TRANSFER OF BILL OF SALE AND ASSETS AS COLLATERAL

Whereas, the above mentioned Sugar Land Industries has accepted six collateral promissory notes executed by the Sealy Corporation, for the sum of twenty-five thousand

dollars ($25,000.00) each, payable January 1st, 1926, 1927, 1928, 1929, 1930, and 1931, respectively, with interest at the rate of 6% per annum from January 1st 1925, as the purchase price of the property, assets and rights assigned and transferred, to the Sealy Corporation, in and by the above and foregoing bill of sale, and

Whereas, the Sealy Corporation is desirous of securing to the Sugar Land Industries the payment of each and all of said notes and has authorized its President to execute said notes and this assignment.

Now Therefore, in consideration of the premises and of other good and valuable considerations, the receipt of which is hereby acknowledged, and as collateral security for the payment of each and all of the notes above mentioned, the Sealy Corporation has and does hereby sell, assign, transfer and deliver to the Sugar Land Industries the above and foregoing Bill of Sale and all of the property, assets, franchises, goodwill, rights and benefits assigned and transferred by said bill of sale to the Sealy Corporation. This assignment is made as collateral security for said notes, and is to be held with said notes, and in accordance with the provisions of said notes.

Executed in duplicate this 30th day of March, 1925.

Sealy Corporation, By ——, ——, President.

THE STATE OF TEXAS,
County of Fort Bend, ss:

Before me, the undersigned authority, on this day personally appeared E. E. Edwards, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this — day of March, A. D. 1925.

——, ——, Notary Public in and for Fort Bend County, Texas.

[fol. 35E] Chicago, Ill.

$25,000.00 March 30th, 1925.

On or before January 1st, 1926, ('27, '28, '29, '30, '31) after date we promise to pay to the order of Sugar Land Industries Twenty-Five Thousand ($25,000.00) Dollars, for value received, negotiable and payable at our office in Chicago, Illinois, with interest from January 1st, 1925, at the rate of six per cent per annum, we having deposited or pledged with Sugar Land Industries as collateral security for the payment of this note the Bill of Sale dated January 2nd, 1925, given by Sugar Land Industries to us, and also all of the property, assets, and rights transferred to us by said Bill of Sale including the patents, trademarks, copyrights, trade names, good will, royalty contracts, and other assets and rights formerly owned by Sugar Land Industries and connected with its mattress department.

Now, in the event of the non-payment of this note at maturity, the holder hereof is hereby invested with full authority to use, transfer, hypothecate, sell of convey the said collaterals, or any collaterals substituted for or added to the above, or any part thereof, or to cause the same to be done at public or private sale, with or without notice or demand of any sort, at such place and on such terms as the said holder hereof may deem best, and the holder of this note is authorized to purchase said collaterals when sold for his own protection; and the proceeds of such sale, transfer or hypothecation, shall be applied to the payment of this note, together with all protests, damages, interest costs and charges due upon the note, or incurred by reason of its non-payment when due, or in the execution of this power. The surplus, if any, after payment of this note, together with all charges above stated, shall be paid to the drawer of this note, or at the election of the holder hereof, to be paid on any other obligation of the drawer hereof, whether as principal debtor or otherwise, held by the holder hereof, and if the proceeds of the above sale shall not be sufficient to pay this note, the drawer hereof agrees to make good any deficit.

Sealy Corporation, By ——, ——, President.

On motion duly made and seconded, it was unanimously voted to request all stockholders to endorse their stock certificate and return them so that they could be deposited with Sugar Land Industries or with some bank or trust company satisfactory to them as additional security for the promissory notes given by this Corporation for the assets of the Sealy Mattress Company. Mr. Coobs was authorized to prepare all papers necessary to carry out the actions of the Board of Directors at this meeting.

On motion duly made and seconded, the officers were authorized to take over and assume the lease of Sugar Land Industries on the floor space in the Furniture Mart Building, Chicago, Illinois, and to purchase the furniture and equipment in said space at cost, and to use same as the office of the Company and the General Manager was authorized and directed as soon as details for the purchase of assets could be closed, to open the Chicago office of this Corporation in said space.

[fol. 36E] On motion duly made and seconded, it was declared to be the sense of the Board of Directors that no supplies be purchased from Sugar Land Industries except these in the office at Chicago, as they felt that such supplies should be turned over as a part of the assets purchased under the option contract.

Some discussion arose as to the advertising which has been done, and on motion of Mr. Haas, seconded by Mr. Thornton, it was unanimously voted that in the opinion of the Board of Directors and the Executive Committee that advertising done had been of a national scope and that the Company was not obligated to go beyond the contract in that particular.

The question was then raised as to the account of Hertz-Hadley Company for advertising and Mr. Hertz stated that Mr. Edwards had just shown him a letter in which the Sugar Land Industries had agreed to pay the account up to January 1st, 1925.

The question as to the amount of maturing obligations and expenses incurred for this year and the amount of royalties in prospect for the same period was considered and discussed. Mr. Edwards expressed the opinion that the stimulus which would be gotten out of a going corporation would increase the royalties and probably double them

for this year, and suggested that the royalties would be checked more closely and that with these increases and the prospective royalties on springs, box springs and beds, the company should pay all of its expenses and retire the notes to be given for the purchases of the assets from the Sugar Land Industries. It was the sentiment of the Board and Executive Committee that the expenses should be held down to the minimum and the business pushed as rapidly as possible.

Mr. Hertz stated that as soon as the purchase of the assets was completed, all factories would be asked to send in their money to take care of advertising and other expenses.

Mr. Hertz also stated that the Saturday Evening Post ad should appear in April.

The question of card board containers for Sealy mattresses was discussed and Mr. Hertz recommended that a quality product like Sealy tuftless mattresses should be packed flat. Quotations for cartons were submitted and it was decided to send samples to each factory.

On motion duly made and seconded, it was decided to open the Chicago office at once, to deposit all funds with Lake Shore Trust & Savings Bank and to authorize the Assistant Treasurer to check on same.

There being no further business the meeting adjourned subject to call under the By-Laws.

Attest:

(Signed) E. E. Edwards, President.

(Signed) H. E. Wolf, Secretary.

[fol. 37E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 3

SEALY CORPORATION

Minutes of Executive Committee Meeting

Pursuant to the call of the President, a special meeting of the Executive Committee was held at the Congress Hotel, Chicago, Illinois, this 8th day of April, 1925.

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There were present Mr. E. E. Edwards, President, Mr. R. J. Haas, Vice-President, Mr. G. D. Thornton, Treasurer, Mr. M. E. Wolf, Secretary, Mr. A. C. Wilcken, Mr. J. P. Chapman, as members of the Executive Committee, Mr. Wm. Hertz, business counsel, general manager and assistant treasurer, Mr. Thos. H. Cobbs, legal counsel, and assistant secretary, and Mr. C. P. Trimble.

The Minutes of the Organization Meeting held on February 13, 1925, which includes a copy of the Certificate of Incorporation, the By-Laws, the Option Contract, the Contract for the Organization of this Company, the Bill of Sale given to this Company, the Assignment of the Bill of Sale as collateral security and the collateral promissory notes given for the purchase of the assets from Sugar Land Industries, were submitted, read and approved.

The President reported that he had closed the deal for the purchase of the good will and assets of the Sealy Mattress Company from the Sugar Land Industries and presented the Bill of Sale executed by them and asked authority to execute and deliver the promissory notes and the Assignment of the Bill of Sale back to them as collateral security.

On motion duly made and seconded, the President, Mr. E. E. Edwards, was authorized and directed to execute and deliver the six (6) collateral promissory notes for twenty-five thousand dollars ($25,000.00) each, to the Sugar Land Industries for the purchase of the assets from them

and to also execute the Assignmenet of the Bill of Sale received from them as collateral security to the notes and to consumate the deal for the purchase of the good will and assets from the Sugar Land Industries.

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[fol. 38E] The question as to the right of licensed factories to make and sell tuftless mattresses without putting the Sealy label on them, and of selling them outside of their respective Sealy Territory, was discussed and it was stated that according to reports the factory at Denver had done this. The President was instructed to write the Denver factory, calling attention to this practice as unfair competition, and urging that if the factory there had been selling tuftless mattresses without the label, as reported, the practice be discontinued.

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[fol. 39E] Mr. Hertz also reported on some questions of dispute between the Richmond and Atlanta territories. On motion, Mr. Edwards and Mr. Haas were appointed to fix the boundary between these two territories, and it was expressed as the general sentiment that all boundaries should be determined and made definite and not left to be determined by changing freight rates.

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Mr. Hertz reported on the situation in the northwest, stating that Mr. Bowersox had apparently done nothing toward establishing a factory in Seattle, and that Mr. Bonesteele of Tigard, Oregon wanted the territory and seemed ready and willing to enter the territory if it was granted him. On motion, Mr. Bowersox was to be requested to release the Seattle territory and the territory was to be turned over to Mr. Bonesteele of Tigard, Oregon, with minimum guaranteed.

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[fol. 40E] The question of co-operative purchasing was discussed, to a considerable extent, and it was the sense of the meeting that the office of this Corporation should be used for all purchasing which could be handled to advantage, and each factory was requested to send samples of supplies used by it, together with prices and the sources of supply to the Chicago office, so that the Chicago office could determine what supplies could be brought to advantage and advise the different factories and arrange with them for the supplies.

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[fol. 41E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 4

Condensed Minutes of the Sealy Corporation Convention
June 25th, 26th and 27th, 1925

June 26, 1925.

1. This is a condensed report of the seventh semi-annual June Convention of Sealy Mattress factories, held in Chicago, June 25th-26th-27th, 1925, at the Congress Hotel.

2. Chairman E. E. Edwards called the Convention to order at 10:30 A. M. There were present Mr. H. E. Wolf, Secretary, Mr. Trimble, Mr. Haas, Mr. Donnaud, Mr. Jacoby, Mr. Shadrick, Mr. Thornton, Mr. Hertz, Mr. Bowersox, Mr. Nordwald, Mr. Stein, Mr. Sigmon, Mr. Wolfe, Mr. Egan, Mr. Sutherland, Mr. Wilckens, Mr. Cobb, Mr. Bonesteele and Mr. King.

3. Minutes of the preceding Convention were read by Mr. E. H. Wolf, Secretary. After remarks by Assistant Secretary, T. A. Cobb, these minutes were approved.

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11. On legal matters, Mr. Cobb reported the corporation [fol. 42E] had been completed and stock practically all issued and that those factories who had not received their stock would get it immediately upon presentation of letter naming the individual entitled to receive it and that all such stock and notes properly endorsed be deposited in a bank as Sugarland Industries collateral.

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14. Upon motion of Mr. Wolf, seconded by Mr. Stein, Executive Committee shall write up specifications for Sealy box springs. Motion carried. In this connection, Mr. Donnaud and Mr. Sigmon proposed the minimum be 72 coils. Mr. Wolf suggested 3½" to 4" coil on drop box spring as low as possible.

15. A Sealy sales manual was suggested by Mr. Ed-

wards, which Messrs. Wolf, Haas, Donnaud and Hertz thought worth while to mail the 15,000 names on Sealy list. No action.

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17. Upon motion of Mr. Egan, regularly seconded and carried, it was suggested Executive Committee prepare an advertising leaflet tying in with phonograph records.

18. Upon motion made and seconded it was determined The Sealy Corporation produce 7,500 32-page Hotel booklets, 9 x 12, to cost not over 30¢ each, with art covers; The Sealy Corporation to pay layout and art-work costs, 600 copies to be distributed as subscribed. (See list paragraph #16.)

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[fol. 43E] 25. Mr. Bonesteele spoke on penalizing infringing. Mr. Sigmon reported infringements in his territory, which Mr. Hertz stated had stopped. UPON MOTION of Mr. Haas, seconded by Mr. Wilckens, resolution was made that all infringements be reported to the corporation office and if found to be an infringement, Executive Committee determine disposition. Unanimously passed.

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[fols. 44E-45E] 35. On the subject of future ticking orders, it was arranged that the factories advise Chicago office the quantity and pattern of ticking wanted and that Golding Bros. advise Mr. Donnaud when any number is half-used so detail of additional requirements could be furnished without running short on any pattern and to avoid over production.

36. Golding Bros. were instructed to leave out the word "Star" on Sealy Star ticking.

37. Mr. Hertz requested all factories handling Sealy springs report in their royalty statement each month number of springs sold, royalty on Sealy springs, 25¢ each.

38. Upon motion of Mr. Haas, seconded by Mr. Hertz, The Sealy Corporation was directed to pay bill of Eagle

Wabash Corp. covering lamps that had been used in the display space, which had been reported lost.

39. Mr. Haas presented ad of Lammert Furniture Company, St. Louis, under date of June 21st, Mr. Jacoby stated he had sold the merchandise in question, including Tuftless mattresses, at 25% on account of oil spots and that the seller should not have marketed them as perfect. Mr. Thornton stated this would not happen again and that the Sealy line had been taken from Lammert.

40. Upon motion of Mr. Haas, Messrs. Bowersox, Wolfe, Wolf were instructed to draw specifications for a line of Sealy pillows, designating price and upon which a royalty of 10¢ per pair would be paid the corporation. UPON motion was carried.

41. Mr. Sam Golding returned to the meeting and brought up quantity of Luxel and Airlite tick and for which he wanted orders. Mr. Haas stated the Ticking Committee would handle the subject and give shipping instructions as soon as possible.

42. Motion was made and carried that the Chicago office promptly get a loose-leaf book into which all minutes would be typed.

43. Mr. Edwards spoke on the necessity of punctual attendance at meetings and requested that all members come with full authority to act in any matter for the firm represented.

44. Upon motion of Mr. Sigmon the corporation was directed to produce 20,000 Sealy catalogs, Mr. Hertz to apportion them to each factory in accord their mailing list, allowing some stock for each factory.

45. Upon motion, made and seconded, the corporation was directed to produce 100,000 Texlan mattress stuffers.

46. Mr. Edwards stated he had 40,000 yards of Sealcrest and Airlite ticking on hand worth about $17,000 and requested those factories who could to help him dispose of them.

47. Motion was made by Mr. Haas that Luxel and Airlite ticking be used on Texlan mattresses until stock is exhausted. Seconded and carried.

48. Messrs. Haas and Wolfe were appointed to work out Texlan tick proposition to use up old stock.

49. Mr. Donnaud made Motion that the Sealcrest mattress appear in the catalog. Unanimously passed.

[fol. 46E] 50. Mr. Edwards made Motion that the directors be increased to 25 and that a share of stock be issued to each director not on present list; also that it is the sense and understanding of each director that in case any factory leaves The Sealy Corporation that its one share be returned to the corporation without cost and that each certificate be endorsed in blank and put in escrow in accordance with original agreement. Seconded by Mr. Wolf and carried.

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55. Mr. Haas Motioned that territories be permanently fixed and future freight rate changes be disregarded. Motion carried unanimously with the understanding only rail rates be considered.

[fols. 47E-50E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 6

Houston, Tex., January 25th, 1928

Condensed Minutes of The Sealy Corporation 11th Semi-Annual Convention Chicago, Ill.

January 12th, 13th and 14th 1928

1. The 11th semi-annual Sealy Convention was held at the Congress Hotel, Chicago, January 12th, 13th and 14th.

2. Mr. Edwards called the meeting to order at 10:15 the morning of the 12th. Mr. King recorded the minutes.

3. There were present in person January 12th:

Mr. Chadwick	Mr. Nordwald	Mr. Bonesteele
Mr. Smith	Mr. Edwards	Mr. Schwoerke
Mr. Bergmann	Mr. King	Mr. Wolf
Mr. Stein	Mr. Thornton	Mr. Cunningham
Mr. Shipiro	Mr. Wolfe	Mr. Dobner
Mr. S. P. Gordon	Mr. Bowersox	
Mr. M. A. Gordon	Mr. Sigmon	

4. Dudley Davis arrived late in the afternoon, having made the trip from Mempis via airplane.

5. Mr. Haas did not attend the meeting of the 12th and beyond routine matters little was accomplished, the other members feeling that Mr. Haas' ideas, interest and co-operation were necessary to any concerted program.

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[fol. 51E] 31. Mr. Edwards stated that a plan was being worked out whereby Holman & Company of Boston might operate the Boston territory; that Mr. Haas was willing to relinquish that territory to establish a factory and that Holman & Company might later become identified with the Sealy Corporation on some fair basis, to be worked out.

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[fol. 52E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 7

Minutes of the 19th Semi Annual Executive Committee Meeting, Sealy Corporation, Held at Hotel Congress, Chicago, Illinois, December 29th, 30th and 31st, 1932

1. Present:

J. R. Haas, Memphis, Tenn.
H. E. Wolf, Pittsburgh, Pa.
Morris Stein, Denver, Colo.
Frank Wuliger, Cleveland, Ohio
L. H. Goldman, St. Louis, Mo.
E. E. Edwards, Houston, Texas

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4. Mr. Edwards opened the meeting with remarks relative to the general situation of the Corporation and developments and changes that occurred during the year 1932.

5. Mr. Edwards then presented a statement of the affairs of the old Sealy Corporation. The accounts receivable, as of December 23rd, 1932, total $9,559.38. The above amount includes minimum royalties through the month of November.

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[fol. 53E] 6. After discussion of the financial standing of the old Corporation, the next subject discussed was the one of reorganizing a new company as successor to the old Corporation.

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[fol. 54E] 7. Mr. Edwards submitted a plan of having Ernst & Ernst take the per capita wealth, purchasing power, population, circulation of national publications and other factors as a basis of computing an equitable co-operative basis of operation.

After considerable discussion, Mr. Frank Wuliger stated that in view of the fact that the primary purpose of the

organization is to secure national advertising, and that mainly is what each factory secures from the Sealy Corporation when the purposes of the Corporation are being demonstrated through the medium of advertising in national publications, the circulation of the publications used should be an equitable basis upon which to assess Sealy factories. The above was unanimously agreed upon.

The interpretation of, and the construction to be placed upon the above paragraph is that when the new Corporation is formed and the national advertising becomes effective, each factory will pay on a pro rata basis of the circulation of the national publication in its territory.

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[fol. 55E] 10. When we reached that point in our discussion, Mr. Edwards was requested to ask for an interview with Mr. Paul E. Faust of Mitchell, Faust, Dickenson & Wieland, a large advertising agency who was contacted for us by Mr. Morris Stern Sr. last January when we had the pleasure of Mr. Stern's presence, counsel and advice.

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[fol. 56E] 11. The next subject was that of incorporating a new Company to hold the Patents, Trademarks and Good-Will of the former Sealy Corporation. Mr. Edwards outlined a stock structure, prepared by Mr. Morris Stern Sr., and after considerable discussion, it was approved with the further understanding that each of those present would return home and discuss it with those who might be interested, and give us the benefit of their views, if anyone felt a better plan could be worked out.

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[fols. 57E-58E] 13. On Mr. Edwards way to Chicago, he interviewed Mr. Thomas H. Cobbs, General Attorney for the Sealy Corporation, and did likewise on his return home when he passed through St. Louis. Mr. Cobbs is ready to proceed with the incorporation of the new Company as soon as we tell him exactly how we want it set up.

Mr. Dreeben and Mr. Stern will be in Houston next week, and after conferring with them, Mr. Edwards will write each member of the group further, as well as Mr. Cobbs.

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[fol. 59E] 20. At the moment, I have not, in my own mind, found a way to tie in the publication circulation assessment to the stock deal, but I am certain that our new contract should not be a license contract, but a "Stockholders' Right" contract, if no legal objection is found to it.

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21. In planning to carry out the above proposed operation, the United States has been divided into sectional territories, so that a sectional executive will contact the factories that we want to bring into the group.

[fol. 60E] For instance, Mr. Harry E. Wolf of Pittsburgh will contact factories in Philadelphia, Baltimore, New York, Boston, Bangor, Albany, Montreal, Buffalo and Washington, D. C. When he has these factories properly lined up, he will notify me, and we plan to visit them together on a daily schedule that he has previously arranged.

Mr. Stein will accompany the writer on a trip to the Pacific Coast, to start the latter part of February.

Mr. Wuliger will arrange meetings in Detroit, Cincinnati, Columbus, Toledo and Akron.

Mr. J. R. Haas will make appointments in Richmond, Columbia, Indianapolis, Chicago and Milwaukee.

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[fol. 61E] 25. The next subject was that of a promotion item for the February sale. Mr. J. R. Haas used an ensemble idea in August that went over in good style, and he fully explained it to the group. He is to send proofs, furnish mats and complete details immediately, so that we can use it for a February promotion.

26. Some of the group wanted a spring center card produced immediately. We could not get sufficient orders for

one. Mr. J. R. Haas explained that a very good silk screen oil color process display could be produced at a very low cost and in any quantities desired. The group agreed that Mr. Haas should submit a design and prices to Mr. Edwards, who would in turn forward it to Pittsburgh, etc., each writing Mr. Haas the quantity desired.

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[fol. 62E] 28. The next subject was that of ~~trade~~ names and prices. After much discussion, the following names, materials, constructions, finish, prices and promotions were agreed upon.

Enchanted Nights

Trenton Spring Products Lace Webb Construction.
34 lbs. first cut linter felt.
Heavy canvas bag to cover wire construction.
Tick to cost not less than 50¢ for 56 inch width with border, or 60 inch all over, or 8-ounce ACA Amoskeag.
Ticking sewed with beaded edge.
Swiss Loom border.
Finish with inside roll.
Upholstered button tuft.
Hand holds.

Resale	39.50
Wholesale	21.00
P. M.	2.00

Sealy Tuftless

50 lbs. cotton that will grade middling or better.
40 lbs. to be used in inner tick, made of 5.50 sheeting; 10 lbs. middling cotton felt to be placed around entire batt.
Tick to cost not less than 50¢ per yard for 56 inch width with border, or 60 inch all over damask, or 8-ounce ACA Amoskeag.
Ticking sewed with beaded edge, that is, tick is first turned inside out and sewed, and then turned and sewed again, so as to form bead on outside.

Finish roll edge.
Hand holds.
Mattress firmly pressed before being inserted into carton.

Resale	32.50
Wholesale	17.50
P. M.	2.00

[fol. 63E] Sealy Rest Innerspring Tuftless

Young's 285 coil unit, or equivalent.
Cover unit with light weight canvas bag, approximately 6-ounce.
Place 15 lbs. mill run linter felt on each side of unit.
Insert into 5.50 sheeting tick, lace down tightly.
Place 5 lbs. felt each side and insert in regular tick.
Ticking to cost not less than 35¢ per yard, or 8-ounce ACA Amoskeag.
Boxing to have 8-row stitching on pre-built border.
Finish roll edge.
Hand holds.

Resale	32.50
Wholesale	17.50
P. M.	2.00

Air Vent

Hager 210 coil unit.
Light weight canvas cover for unit.
34 lbs. mill run linter felt.
Ticking to cost not less than 35¢ per yard or 8-ounce ACA Amoskeag.
Eyelet boxing with horizontal stitching.
Tape edge.
Finish roll edge.
Button or tape tuft.
Hand holds.

Resale	33.50
Wholesale	17.50
P. M.	2.00

Natural Rest

182 coil unit, covered with 5.50 sheeting bag.
34 lbs. mill run linter felt.
All over damask tick to cost not less than 50¢ per yard.
4-row stitched pre-built border.
Tape edge.
4 Grometts
Finish roll edge.
Hand holds.

Resale	24.50
Wholesale	12.50
P. M.	.50

[fols. 64E-65E] Truease

182 coil unit, covered with 5.50 sheeting bag.
34 lbs. mill run linter felt.
Panel damask ticking, to cost not less than 25¢ or more than 28¢ per yard.
4-row side stitched pre-built border.
Finish roll edge.
4 Grometts.
Hand holds.

Resale	19.75
Wholesale	10.50
P. M.	.50

Fast a Sleep

180 coil unit, covered with 5.50 sheeting bag.
32 lbs. mill run linter felt.
3.95 drill tick.
Tape edge.
Finish roll edge.
4 Grometts.
Cotton Tufts.
No hand holds.

Resale	14.75
Wholesale	7.75
P. M.	None

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[fol. 66E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 8

Minutes of the 20th Semi Annual Executive Committee Meeting, Sealy Corporation, Held at Hotel Congress, Chicago, Illinois, July 8th, 1933

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[fol. 67E] 7. Mr. H. E. Wolf's proposal to divide the entire United States between the present group was seriously considered and discussed at length. The group seemed to feel that while the proposal was an equitable one that the vital thing in which each was most concerned was the raising of a large national advertising fund immediately. After going over the new contract very carefully, Mr. Wolf stated that he was willing to go along on the new basis, and it was then unanimously agreed that a large number of new factories be brought into the Sealy Corporation.

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10. Upon motion made by Mr. J. R. Haas, and seconded by Mr. H. E. Wolf, the President was instructed to proceed with the incorporation of the new organization to be known as Sealy Incorporated, and that said Incorporation is to be for the sum of $150,000.00, the amount paid to the Sugarland Industries for the name, trademarks, patents, license contracts, etc., formerly owned by the Sugarland Industries.

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[fol. 68E] 11. The question of prices came up for discussion, and it was unanimously voted that each group be allowed to schedule prices for its factory until the next meeting, at which time prices for all factories will be determined.

12. The group then tried to determine upon the names of the various grades of mattresses that would be used in the national advertising campaign. After some discus-

sion, it was suggested that all the names be submitted to the advertising agency selected and that they in turn pick the names to be used in our national advertising program. The group unanimously agreed to that arrangement.

13. It is further agreed that no cut prices are to be made on any of the articles advertised in the national magazines. This is intended to mean that no cut prices can be made without general authorization by the group, and only on a uniform basis throughout the entire United States.

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[fol. 69E] 20. Your President was instructed to divide up all the territories on the basis of the new proposal. In view of the fact that all the territories have not been decided upon, we are of the opinion that this would be a waste of time, effort and money. We proposed to bring to the next meeting a map of every State showing county lines and from the circulation statements of all the publications that will be used, we will compile figures showing the actual circulation of all the publications going into any given territory.

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[fol. 70E] 23. Mr. J. R. Haas obtained from the chairman of the cost accounting committee a cost sheet of suggested wholesale prices for regional zones number one, two and three. The specifications and the prices are herewith given below.

#1	Cotton Matt.	45#	Sheeting		$4 85
#2	Cotton Matt.	50#	Sheeting		5.10
#3	Plated Matt.	50#	Sheeting		5.75
#4	Felted Matt.	45#	Sheeting		6.50
#5	Felted Matt.	50#	Sheeting		7.00
#6	Felted Matt.	50#	475 Drill	Four-Row Stitch	7.90
#7	Felted Matt.	55#	475 Dirll	Four-Row Stitch	8.40
#8	Innerspring Matt.		475 Drill	160–170 Coil Cons.	9.00
#9	Innerspring Matt.		475 Drill	160–170 Coil Cons. Tape Edge Two Vents Each Side	9.50

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[fol. 71E] 25. With the assistance of Mr. L. H. Goldman, Mr. E. C. Haas, Mr. Nathan Dreeben, Mr. J. R. Haas and Mr. M. Stein, your President contacted the heads of organizations in

Los Angeles	Indianapolis
San Francisco	Fresno, Calif.
Portland, Ore.	Birmingham, Ala.
Minneapolis	Salt Lake City
Chicago	Bloomington, Ill.
Detroit	Louisville, Ky.
Buffalo	Davenport, Iowa
Boston	Milwaukee, Wis.
New York	Burlington, Vt.
Baltimore	New Orleans, La.
Cincinnati	

Your President explained to the party in New Orleans that Mr. Haas proposed to cover that territory, and his application could not be entertained. Mr. Haas also pointed out to the writer that he probably would not want to give up the Louisville territory.

Mr. Haas stated that three factories should be obtained in the State of Florida, one for the South, one for the North and one in the Tampa area. Mr. Haas volunteered to contact the three factories necessary to complete the organization in that State.

Manufacurers were not present from the Cities of Seattle, Van Couver, Winnipeg, Montreal or Toronto. The [fols. 72E-76E] writer met one gentleman from Toronto but was unable to talk to him at that time and is not in position to determine if it is a factory we want to invite into our group. It appears that the vacancies in factories are in Oklahoma City, Richmond, Va., Philadelphia, Spokane, Wash., Toledo and Akron, Ohio, in event Toledo does not work the latter City.

The writer suggests that you immediately send to the Houston office the names of mattress factories which you think should join the Sealy group at those points where no factory has been contacted.

It has just occurred to the writer that he did not con-

tact Mr. Hasselbarth of Albany, N. Y., but as I know him quite well personally, I will write him.

26. Upon motion duly made and seconded, the following officers of Sealy Incorporated were elected unanimously.

E. E. Edwards, President
J. R. Haas, Vice President
H. E. Wolf, Secretary
M. Stein, Treasurer

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[fol. 77E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 9

Minutes of the Meeting of the Executive Committee of Sealy, Incorporated, held at the Jefferson Hotel, St. Louis, Missouri, November 27th and 28th, 1933.

Meeting attended by Messrs. J. R. Haas, H. E. Wolf and E. E. Edwards. Mr. M. Stein, member of the Committee, did not attend.

The meeting was called, because Mr. Thos. H. Cobbs, attorney for Sealy, Incorporated, advised that the contract needed many revisions, and that it was necessary for us to confer with him before new factories could be signed up by the new company, known as Sealy, Incorporated.

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[fol. 78E] The terms of the contract and proposed changes were apparently thoroughly analyzed and decided upon. Mr. Cobbs is rewriting the contract, and we expect copies of it at an early date. As soon as received, copies will be made and sent to you.

In the formation and development of the plans for Sealy, Incorporated, it is generally recognized that it will be necessary to secure the services of some outstanding man in the mattress industry, who will devote his time exclusively to the direction of Sealy, Incorporated.

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[fols. 79E-80E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 11

Houston, Tex., March 3rd, 1926.

Condensed Minutes of The Sealy Corporation Convention, Chicago, Ill., January 7th & 8th, 1926

1. The eighth semi-annual Sealy Convention was held in the Congress Hotel, Chicago, Ill., Thursday and Friday, January 7th and 8th, 1926.

2. There were present in person January 7th:

Mr. Edwards	Mr. Donnaud	Mr. Bowersox
Mr. Haas	Mr. Chadwick	Mr. Sigmon
Mr. Wolf	Mr. Stein	Mr. Sutherland
Mr. King	Mr. Gordon	Mr. Cunningham
Mr. Cobbs	Mr. Chapman	Mr. Trimble

Mr. Bonesteel was represented by proxy to Mr. Cunningham.

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8. Mr. Bowersox made motion that disputed territory boundaries be fixed as of January 1st, 1926, if present contract specified no fixed boundary. Motion seconded and carried.

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[fol. 81E] 25. Mr. Bowersox made motion, which was seconded and carried, that no sales be run by any factory outside of the semi-annual sales without the consent of the Corporation.

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31. Mr. Edwards pointed out that considerable difference exists in the price charged for the smaller sized mattresses, by the different factories. A Committee composed of Messrs. Stein, Sigmon and Sutherland was appointed to determine what prices should be charged for mattresses less than full size. The Convention recommended the prices so determined be adopted by all factories.

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[fols. 82E-85E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 12

Semi-annual meeting of the Stockholders of The Sealy Corporation, held at the Congress Hotel, Chicago, Ill., January 13th, 14th & 15th, 1927.

1. Pursuant to regular call and notice, the ninth semi-annual convention of stockholders of The Sealy Corporation was held in the Congress Hotel, Chicago, Illinois, January 13th, 14th and 15th, 1927.

2. The meeting was called to order at 10 AM January 13th by President Edwards, the minutes being recorded by Mr. King.

3. There were present the following:

Mr. Chadwick	Mr. Thornton	Mr. King
Mr. Smith	Mr. Wolfe	Sigmon's Cousin
Mr. Bergmann	Mr. Bonesteele	Mr. H. E. Wolf
Mr. Stein	Mr. Bowersox	Mr. W. Sutherland
Mr. Dobner	Mr. Wilder	Mr. Cunningham
Mr. Gordon	Mr. J. R. Haas	Mr. Davis
Mr. Edwards	Mr. Sigmon	

4. Mr. Edwards stated the purpose of the meeting, and laid stress on the importance of members not discussing outside of our organization the matters that came up in meetings.

5. Mr. Haas reviewed some of the points in the Golding tick situation, explaining that the conditions complained of had been investigated by himself, Mr. Edwards, Mr. H. E. Wolf and Mr. Wuliger, in New York, during December and that so far as he was concerned his objections were withdrawn and the matter closed.

6. Mr. King read the Treasurer's report. After discussion and upon motion of Mr. Haas, seconded by Mr. H. E. Wolf, it was ordered received and filed.

7. The matter of changing the price on the Sealy tuftless came next. The following opinions were recorded on a round table expression;

H. E. Wolf	—Leave at $29.50.
Mr. Bergman	—Agreeable to leave at $29.50 but prefers drop.

Mr. Chadwick	—Leave at $29.50 but give more dealer co-operation.
Mr. Gordon	—Same as Mr. Chadwick.
H. M. Wolfe	—Leave at $29.50
Mr. Sigmon	—On 13¢ cotton reduce to $24.50, or hold where it is and increase allowances.
Mr. Cunningham	—Lower wholesale price $3. to $5. of increase retail price.
Mr. Thornton	—Same as H. M. Wolfe.
Mr. Bonesteele	—Leave where it is.
Mr. Stein	—Reduce to dealer only.
Mr. Haas	—Leave resale alone; increase advertising allowance.
Mr. Wilder	—Leave both prices the same.
Mr. Bowersox	—Leave both prices the same—Spend $3. each advertising.
Mr. Sutherland	—Leave both prices alone.

After full discussion, motion was made by Mr. Haas, seconded by Mr. Cunningham, and unanimously passed, That we maintain the present Tuftless resale price; that we maintain the present wholesale price; that we not make the dealer any allowance in excess of $2.50 per tuftless to be used as each factory sees fit; that the plan be not circularized but handled personally through the salesmen under written agreement.

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[fols. 86E-87E] 41. The following Committee was appointed to work out prices on odd size mattresses: Mr. H. M. Wolfe, Chairman, Mr. Haas, Mr. Bowersox, Mr. Stein, Members. This committee failed to function and the work was undertaken by Messrs. Smith, Stein and Haas, who determined on the following:

	Delivered	FOB Factory	3/6 & Under
Tuftless	Unchanged	—	
Sealcrest	22.50	—	100 less
Luxel	18.50	—	
Star	16.00	15.50	75¢ less
Airlite	14.75	—	1.00 less
Texlan	13.00	12.50	75¢ less
Truease	11.50	1.00	50¢ less

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[fol. 88E] 50. Mr. Bonesteele wanted the Executive Committee to make a newly executed operating agreement between Tigard and Seattle factories a part of their license contracts. In the absence of members Haas, Thornton and Cunningham a quorum was not available to pass on this after eliminating Mr. Bowersox as a committee member by reason of his being a party to the contracts in question. The points in the situation were outlined to the convention by Mr. Edwards. Decision was that the territories alloted in the original license contracts remain unchanged and that Tigard and Seattle continue to operate under their new operating agreement.

51. Mr. Bowersox protested the executive Committee's distribution of the Butte factory territory. No action was taken beyond that Mr. King would send Mr. Bowersox a map outlining the details of the division.

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[fols. 89E-90E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 13

(7-26-27)

Minutes of Tenth Semi-Annual Meeting of the Stockholders of The Sealy Corporation held at Chicago, Illinois, June 23-24-25, 1927

1. Pursuant to regular call and notice the tenth semi-annual meeting of the stockholders of The Sealy Corporation was held at the Congress Hotel, Chicago, Illinois, in room 1302, Thursday, Friday and Saturday, June 23-24-25, 1927.

2. The meeting was called to order at 10:45 AM June 23rd by President Edwards, Mr. King recording the minutes.

3. There were present Messrs.:

Chadwick	Thornton	Sutherland
Bergmann	Wolfe	Cunningham
Stein	Haas	Dobner
Gordon (M. A.)	Sigmon	Bonesteele
Gordon (S. P.)	Schwoerke	King
Nordwald	Wolf	Davis
Edwards	Morton	

Salt Lake was not represented, and a telegram from Mr. Bowersox was read stating he could not be present on account of sickness.

* * * * * * *

[fol. 91E] 20. The matter of price of the tuftless mattress was given a great deal of discussion. Final decision was that both wholesale and resale price remain unchanged. On sale-time tuftless only, an allowance to the dealer of $3.00 per tuftless was authorized for advertising, while an additional $1.00 might be allowed for spiffs in sections where competitors gave spiffs.

21. Mr. Edwards stated that he was seriously considering switching from exclusive dealerships for wider distribution. Discussion indicated most factories favored more

than one dealer per town except where a representative Sealy line was carried and pushed with reasonable diligence by one dealer.

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[fol. 92E] 26. The Convention was reminded that the freight rate at January 1st 1926 controls the territory boundary in all cases except where definite boundary appears in the original license contracts, the territory in question going to the factory having the lowest LCL first class freight rate at that date.

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29. Motion was made by Mr. Thornton, seconded by Mr. Sigmon, and regularly passed, that if any factory failed to pay the assessments levied against it, and such assessments be assumed and paid by some other factory, the factory that pays for the factory that fails to pay shall in the final distribution of the Sealy Corporation Stock receive the equivalent of *300* for each *100* paid under this arrangement.

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[fol. 93E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 17

Minutes of the Sealy Convention Held Hotel Congress, Chicago, Illinois, January 17th, 18th and 19th, 1931.

1. Present:

M. Stein, Denver, Colorado
H. E. Wolf, Pittsburgh, Pennsylvania
J. R. Haas, Memphis, Tennessee
W. L. Chadwick, Buffalo, New York
Earl H. Bergmann, Cleveland, Ohio
Frank Wuliger, Cleveland, Ohio
M. A. Gordon, Detroit, Michigan
S. P. Gordon, Detroit, Michigan
J. P. Chapman, Detroit, Michigan
H. F. Bonesteele, Tigard, Oregon
E. C. Haas, Kansas City, Missouri
C. T. Sigmon, Oklahoma City, Oklahoma
Charlie Meyers, Oklahoma City, Oklahoma
E. E. Edwards, Houston, Texas

Sealy Members not present:

G. D. Thornton, Indianapolis, Indiana
H. M. Wolfe, Indianapolis, Indiana
Sidney Sutherland, Richmond, Virginia
Otto Nordwald, El Paso, Texas

2. Minutes of the previous meeting were adopted without being read.

3. Mr. E. E. Edwards, on behalf of the Treasurer, Mr. G. D. Thornton, submitted a statement of the Sealy Corporation, showing its financial condition as of December 31st, 1930. For the benefit of those members not present, we are glad that we are able to state that the fifth note due the Sugarland Industries was paid during 1930, plus interest charges. The Radio Advertising account with the National Broadcasting Company was also adjusted and paid in full. Several other accounts of minor importance were paid.

4. The next subject following that of the Financial Report was the Proposed Contract Between the Missouri Casket Company, Kansas City, Missouri, Sealy Mattress Company, Kansas City, Missouri, and The Sealy Corporation.

The Contract was explained in detail; the method of manufacturing and distributing, and the fact that only the territories controlled by Mr. G. D. Thornton were not included, as Mr. Thornton had refused to concede his rights on the same basis that the other factories agreed upon. [fols. 94E-100E] The way the matteer now stands is that the Corporation grants the Missouri Casket Company the exclusive right to sell Sealy labeled casket mattresses in connection with the sale of its patented device used in caskets. Thee Kansas City factory will manufacture all mattresses for the Missouri Casket Company, with the exception of those produced for the St. Louis, Indianapolis and Chicago territories. These will be produced by Mr. Thornton's factories for those territories.

The Missouri Casket Company guarantees us a minimum royalty of $750.00 per month, with an advance payment on royalty of $5,000.00 cash.

The Casket Contract was unanimously approved by all members present, with the exception of Mr. E. E. Edwards, who voted "No". Mr. Edwards made the statement that he was opposed to Casket Advertising and that nothing that had been said had changed his views, but, as all other factories were in favor of it, he would step aside so as to conform to the wishes of the majority.

* * * * * * *

[fol. 101E] 16. Another subject was that of securing Additional Sealy Representation, and Mr. E. E. Edwards was instructed to arrange with various members to seek logical prospects in states where we are not represented. This action will be taken as quickly as it is convenient and possible.

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[fol. 102E-112E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 18

Minutes of the 18th Semi Annual Sealy Convention, Held at Hotel Congress, Chicago, Illinois, January 15th and 16th, 1932.

1. Present:

J. R. Haas, Memphis, Tennessee
H. E. Wolf, Pittsburgh, Pennsylvania
Earl H. Bergmann, Cleveland, Ohio
M. Stein, Denver, Colorado
E. C. Haas, Kansas City, Missouri
W. L. Chadwick, Buffalo, New York
M. A. Gordon, Detroit, Michigan
L. H. Goldman, St. Louis, Missouri
W. F. Cady, Tigard, Oregon
J. W. King, Pittsburgh, Pennsylvania
Nathan Dreeben, San Antonio, Texas
Morris Stern, San Antonio, Texas
E. E. Edwards, Houston, Texas

Factories not represented:

Richmond, Virginia
El Paso, Texas
Boston, Massachusetts

2. Reading of the minutes of the previous meeting was dispensed with.

3. Mr. E. E. Edwards, President of the Sealy Corporation, presided.

Mr. E. E. Edwards opened the meeting and dwelled upon the few changes that have been made in the organization, and outlined plans for future development. Mr. Edwards touched upon many other various angles of the business situation, and the manufacturing, distributing, advertising, and selling necessities of 1932.

4. The next subject was that of a very confidential nature, the reading of a contract proposed by S. Karpen & Brothers and the Sealy group. After careful reading and

consideration, the organization unanimously agreed that the contract, in the form presented, was not entirely acceptable, and that further negotiations should be continued.

Negotiations were continued, and, in a series of conferences with S. Karpen & Brothers, progress was made. Conclusions will be reported in another bulletin on this subject.

. . . . . .

[fol. 113E] 28. In conclusion, please permit me to say that during the Bedding Alliance Convention and the Sealy Convention, I was able to contact factories of substantial [fol. 114E] financial means at almost every point we have a vacancy in the Sealy organization at this time. In a few days, we will write you about our plans for lining up these factories. For certain reasons, we did not attempt to close contracts with them while in Chicago.

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[fol. 115E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 22

St. Louis, Missouri—May 1st, 1925

Minutes of Special Meeting of Executive Committee

An *Executive Committee Meeting* was called by our President, Mr. E. E. Edwards, at St. Louis, Missouri, Friday, *May 1st, 1925.* The meeting was called to order at 10:00 A. M., at the Jefferson Hotel.

Members present were:

E. E. Edwards, Sugar Land, Texas
J. R. Haas, Memphis, Tenn.
G. D. Thornton, Indianapolis, Ind.
H. E. Wolf, Pittsburgh, Pa.
H. C. Wilcken, St. Paul, Minn.
Wm. Hertz, Chicago, Ill.
J. P. Chapman, Detroit, Mich.

This *Special* Executive Committee Meeting was called to *accept or reject Mr. William Hertz's resignation as General Manager* of the Sealy Corporation. After discussing matters, Mr. Hertz reconsidered his resignation, which was unanimously approved by the Executive Committee, and will continue to perform duties as heretofore.

The next matter debated was the *Seattle territory.* A *letter* was *written* to Mr. *J. W. Bowersox* of Los Angeles, Calif., copy of which is hereto appended and is a part of the Minutes. This letter was signed by each member of the Executive Committee present at this meeting and was approved by all present.

. . . . . .

It was regularly moved and seconded that *Mr. Edwards,* president of the Sealy Corporation, *write* the *Sealy Factory* at *Cleveland,* Ohio, asking them to *release their Sealy territory,* due to the fact that they have not co-operated in the various activities of the Sealy Corporation.

. . . . . .

[fol. 116] Jefferson Hotel, St. Louis, Mo., May 1st, 1925

Mr. J. W. Bowersox,
c/o Sealy Mattress Co.,
Los Angeles, Calif.

Dear Mr. Bowersox:—

We exceedingly regret that you are not with us today. This Executive Committee Meeting was called especially for your benefit and you were the only member who was not in attendance.

It was not the desire of the Executive Committee nor of Mr. Hertz to give you offence or in any way jeopardize what you considered to be your rights in the Sealy organization. It was their desire to help you and to help the Sealy organization as a whole and we felt this could be best done by turning over the Seattle territory which we consider is open, to the Tigard factory.

We cannot and do not recognize that you have a Sealy contract for Seattle, but in order to show you that we desire to co-operate with you fully, the Executive Committee are willing to give you a contract for the Seattle territory on the definite provision that you will pay to the Sealy Corporation (Mr. Hertz) Five Hundred ($500.00) Dollars in cash moneys for the privilege of such contract and agree to have a plant in operation in Seattle by the first day of June.

We are not taxing you with $500.00 for this Sealy contract, but it is necessary to compensate us for the time that has been lost in starting a plant from January to June, 1925, at a rate of $100.00 per month.

It is necessary that Mr. Hertz be advised in writing on or before May 15th of your desire to accept this contract and such desire must be accompanied by check as above stated.

It is also the sense of the Executive Committee that each Month's royalties of every participating Sealy Company must be paid not later than the 15th of the month following. Such royalties to be accompanied by the regular royalty reports, and in addition to this that the assessments be paid each month.

When you were at our last conference you agreed to pay $100.00 per month to the Advertising Fund, which becomes as much a part of your obligation as the royalty itself. Therefore, we trust that you will, without delay, send Mr. Hertz your check and report for March royalties, that the minimum for San Francisco be paid up from January First, also the special assessments for each plant be paid up from January First. All these funds are to be sent to Mr. Hertz to reach him not later than May 15th, which then should include the April reports and royalties.

We cannot agree that there is any offset on the San Francisco minimum by the amounts of overage which accrue to Los Angeles.

All the above is written in the utmost spirit of co-operation with both your interests and your good feelings at heart because every member of the Board and Mr. Hertz is personally your friend and wants to see you [fol. 117E] succeed, but at the same time it must be entirely understood that the Sealy Corporation is a business institution and can only function by each member living up definitely to his obligations.

With reference to your telegram regarding price on Sealy merchandise, will say that it was definitely the sense of the Board that each factory must abide by the set minimums.

With kindest regards from each member of the Board and Mr. Hertz, we remain,

Executive Committee, Sealy Corporation.

Committee:

P.S.—Please note that while the Executive Committee does not recognize in any sense that you have a Seattle contract, yet, in order that we may be legally within our rights, should we be wrong in our estimate of your contractual rights, we hereby desire to state that this letter represents a thirty day legal notice of cancellation of this Seattle contract due to your failure to perform under the terms of said contract.

[fol. 118E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 24

December 22, 1925.

Minutes of Executive Committee Meeting, June 27th, 1925

1. The Executive Committee met in Mr. Edwards' room at the Congress Hotel, 5 P. M., June 27th, Mr. Edwards, Mr. Haas, Mr. Thornton, Mr. Wolf, Mr. Bowersox, and Mr. Wilcken being present.

2. Messrs. Bonesteel, Bowersox and Stein stated their wishes relative territory, particularly regarding Montana. After full discussion, the committee determined the Denver factory should have Montana until January, 1926, when it shall go automatically to Tigard and Seattle Factories.

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[fol. 119E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 26

Special Meeting of Executive Committee

Chicago, Ill., November 14, 1925

1. Upon call of the President a special meeting of the executive committee was held in the office of the corporation, Furniture Mart Building, Chicago, at 9:30 A. M. Saturday, November 14th, with every member present, namely:

Mr. Edwards	Mr. Wolf	Mr. Egan
Mr. Haas	Mr. Bowersox	Mr. King
Mr. Thornton	Mr. Cunningham	

• • • • • • • •

[fols. 120E-121E] 10. *Complaint of Oklahoma Factory* was presented *involving Indianapolis Tuftless* mattresses invading Oklahoma Factory's territory at *Holdenville, Oklahoma.* Available data indicated them being *improperly supplied via Lammert Furniture Company, St. Louis,* and Mr. Thornton promise to stop selling Lammert Furniture Company.

11. Upon *motion of Mr. Haas,* regularly seconded and passed, *resolution* was *made* that *boundary disputes* where *not clearly defined by contract be settled on prevailing freight rates.*

• • • • • • •

4. On motion made and seconded, *resolution was passed* that a *factory shipping into the territory of another factory* shall be *settled* with the *factory owning the territory by payment of 10%* of the *retail price* of the *shipment, unless* the *Executive Committee rule otherwise* in *specific instances.*

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[fol. 122E] 33. Mr. *Edwards* stated Sealy Matress Company, *Brooklyn,* want to *give up their Sealy contract.* Mr. *Edwards was directed* to *handle* the *situation,* especially disposition of the $2,300.00 advertising fund Brooklyn agreed to spend. Mr. *Haas* will *consider* covering *New York* and *New England* territories by warehouse from Memphis if no better method presents. *Pittsburgh* will consider handling *Philadelphia* territory likewise.

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[fol. 123E] November 19, 1925.

Executive Committee:

Mr. Edwards,
Mr. Haas,
Mr. Thornton,
Mr. Wolf,
Mr. Bowersox,
Mr. Cunningham,
Mr. Egan.

Gentlemen:

Herewith your copy of minutes of Saturday's Executive Committee meeting as we interpret the decisions.

Please read them carefully and if not in line, advise us so correction may be made at once.

Very truly yours, ——, ——, Executive Secretary.

November 20, 1925.

JWK*MK

Executive Committee:

Gentlemen:

When transmitting minutes of our last meeting we intended to refer especially to paragraph #14 which sets a penalty of 10% of the retail price on shipments into the territory of another factory.

Mr. Edwards, Mr. Bowersox and myself were of the opinion that in connection with a Tuftless mattress, for instance, this penalty of $5.00 would be greater than the factory profit, particularly in bootleg shipments, which we want to make burdensome to all offenders.

Unless immediately advised to the contrary that paragraph will stand in full understanding among us.

Very truly yours, ——, ——, Executive Secretary.

JWK*MK

[fol. 124E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 27

Territory Outline License Factories Per Contracts:

Richmond, Virginia: Richmond and all adjacent territory in every direction until Richmond railroad freight rates meet lower ones from Mebane, Louisville, Cincinnati, Pittsburgh and Baltimore.

Salt Lake City, Utah: Salt Lake City and adjoining territory in every direction to points at which lower railroad freight rates are effective from Denver, El Paso, Texas, Los Angeles, San Francisco, Portland and Butte, Montana.

Buffalo, New York: Bualo and adjacent territory in all directions until meeting lower railroad freight rates from Boston, New York City, Philadelphia, Pittsburgh and Cleveland, in the United States.

Los Angeles, Calif.: Los Angeles and San Diego, Calif. and territory in all directions in United States, until lower freight rates apply on shipments from San Francisco, Calif. Salt Lake City, Utah, and El Paso, Texas.

Detroit, Mich.: Detroit and all adjacent territory in every direction until meeting lower railroad freight rates from Cleveland, Cincinnati, Indianapolis and Chicago. More definitely defined territory later advised.

St. Louis, Mo.: St. Louis and points in all directions until meeting lower freight rates effective on shipments from St. Paul, Minn., Chicago, Illinois, Indianapolis, Indiana, Memphis, Tennessee, Little Rock, Ark. and Kansas City, Mo. but no shipments into Kentucky or counties of Ripley, Butler, Stoddard, New Madrid or Mississippi in Missouri.

Kansas City, Mo.: Kansas City and to all points North, East and West until meeting a lower freight rate on shipments from Denver, St. Paul and St. Louis, but South only to the Southern boundary lines of the States of Missouri and Kansas.

Seattle, Washington: Seattle, and territory in all directions until meeting lower freight rates applying from Tigard, Oregon, Salt Lake City, Utah, Denver, Colorado and St. Paul, Minnesota.

Tigard, Oregon: Tigard and territory in all directions to all points until meeting lower freight rates which apply on freight shpiments from Seatle, Washington, Butte, Montana, Salt Lake City, Utah, and San Francisco, California.

Atlanta, Georgia: Atlanta and territory in all directions until meeting lower freight rates from Mebane, N. C., Memphis, Tenn., and New Orleans, La. In Florida, however ship all towns East of but not including those on the Atlantic Coast Lines Ry.

[fol. 125E] Indianapolis, Indiana: Indianapolis and territory in all directions to points at which lower freight rates are effective on shipments from St. Louis, Chicago, Detroit, Cleveland, Pittsurgh, and Memphis, but not south of the Ohio River in that part of Kentucky including Louisville and territory south and west of that city.

St. Paul, Minn.: States of Minnesota, North Dakota, South Dakota, Iowa, Wisconsin and Montana, except where lower freight rates applies from the cities of Milwaukee, Omaha, Des Moines and Butte, Montana.

Pittsburgh, Pa.: Pittsburgh and territory in all directions to points at which lower freight rates are effective on shipments from Cleveland, Cincinnati, Mebane, N. C., Richmond, Va., Baltimore, Philadelphia, and Buffalo, New York.

Cleveland, Ohio: Cleveland and adjacent territory in all directions until meeting lower railroad freight rates from Buffalo, Pittsburgh, Cincinnati, Indianapolis and Detroit more definitely defined territory later advised.

Chicago, Illinois: Chicago and adjacent territory extending to points at which lower freight rates are effective on shipments from Detroit, Milwaukee, St. Louis and Indianapolis.

New Orleans, La.: All of Louisiana south of but not inclusive of, points on the V. S. & P. Ry. All points in Mississippi and Alabama to which lower freight rates apply from New Orleans than from Memphis, Tenn., and Atlanta, Ga. All points in Florida on and west of the Atlantic Coast Line Railroad.

Baltimore, Maryland: Baltimore and Washington, D. C. and adjacent territory in all directions to points at which lower freight rates are effective on shipments from Richmond, Va. Pittsburgh, Pa. and Philadelphia, Pa.

Long Island City, New York: Metropolitan New York and territory extending in all directions to points at which lower freight rates are effective on shipments from Philadelphia, Pittsurgh, Buffalo, and Boston.

Oklahoma City, Okla.: All territory north of the counties of Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, and all counties west of the counties of Baylor and Wilbarger in Texas, and all of the State of Oklahoma.

Memphis, Tenn.: Territory adjacent to Memphis and East of Mississippi River in the States of Tenn. Miss. Alabama, Georgia & Kentucky (West and South of Louisville, Ky. inclusive), to points at which lower freight rates are effective on shipments from New Orleans, Atlanta, Mebane, N. C. and St. Louis, also Jonesboro and Paragould, Ark. and territory East of Doniphan, Mo., and south of Delta, Mo.

Little Rock, Ark.: All Arkansas except Jonesboro and Paragould.

San Francisco, Calif.: San Francisco and territory in all [fol. 126E] directions to points at which lower freight rates are effective on shipments from Los Angeles, Salt Lake City, Denver, Colo., Butte, Montana, and Portland, Oregon.

Denver, Colorado: Denver and all points from Denver having lower freight rates than shipments from Omaha, Kansas City, Oklahoma City, El Paso, Texas, Salt Lake City, and Butte, Montana.

Sugar Land, Texas: All the State of Texas with the exception of territory north of the following counties. Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell,—and west of these counties. Baylor and Wilbarger, and except the territory south of the following counties. Andrews and Martin—and west of the counties of Glasscock, Regan, Schleicher, Sutton, Edwards, Kinney.

[fol. 127E] Territory Outline Mebane, N. C. and El Paso, Texas:

Mebane, N. C.: All North Carolina and such portions of South Carolina, Tennessee, and Virginia where Mebane freight rates are lower than those applying from Atlanta, Memphis or Richmond.

El Paso, Texas: In every direction until meeting lower railroad freight rates from Los Angeles, Calif., Denver, Colo., Dallas, Texas, Sugar Land, Texas, and Chihuahua, Mexico. Before second part begins to operate first party shall furnish second party with detailed information showing exact limits of territory covered, and whenever any changes in rates are made, which will alter territory, such information shall immediately be furnished second party by first party. Until notified of change in this manner, sales by second party in territory formerly included shall not be construed as a violation of this contract. And first party agrees and binds itself that it will not grant to any other concern or individual, and that it will not itself manufacture or make sales within the said territory during the life of this contract. But it is expressly understood and agreed that first party shall have the right to make sale of its product, and fill orders within the said territory whenever second party fails to conduct, transact and carry on the manufacture of Sealy Mattresses as provided by the terms of this agreement, but the First party has reserved and by these presents does hereby reserve the hereinafter fixed royalties or fees and one of the considerations, conditions and limitations of the said right and privilege, is the right from time to time to specify the minimum selling price of the said mattresses which may be manufactured under the provisions of this contract and sold or offered for sale, as hereinafter fully provided.

[fol. 128E] As written and rates figured April 11, 1923.

Iowa Territory

For St. Louis factory

Iowa is divided between three factories and that part which you will serve is outlined below.

All east of the Des Moines River and as far north as and including Allamkee, Clayton and Delaware Counties.

In Buchanan County, all south of but not including Winthrop, Independence and Jesup.

In Blackhawk County, all south of but not including Raymond, Waterloo, and Cedar Falls.

All of Grundy County.

In Hardin County, all south of but not including Ackley, Iowa Falls and Wilke.

In Hamilton County, all south of but not including Williams, Reinecker Webster City and Highview.

In Webster County, all east of the Des Moines River and south of but not including Dacomb, Judd and Gupsum, nor Ft. Dodge.

Des Moines to St. Louis.

Very truly yours, Sealy Mattress Co.

[fol. 129E] Salesman's Contract

THIS CONTRACT OF EMPLOYMENT, made and entered into by and between The Sealy Mattress Company, a department of the Sugarland Industries, (an association of Trustees, composed of I. H. Kempner and D. W. Kempner of Galveston County, Texas, and G. D. Ulrich and W. T. Eldridge, Jr., of Fort Bend County Texas, acting under that certain Declaration of Trust, dated January 1, 1919, a copy of which is deposited, for the information of all concerned, with the Texas Bank & Trust Company of Galveston, Texas), of Sugar Land, Fort Bend County, Texas, hereinafter referred to as the "Company" and

_____ _____

hereinafter referred to as "Salesman," provides,

I. In consideration of the respective advantages accuring to both parties hereto, and the mutual covenants and agreements hereinafter fully set forth, the salesman is to offer the goods of the company in the following described territory:

II. The salesman is to devote his entire time and attention, to faithfully promoting the interests of the company in the said territory, and give all of his energy and effort to soliciting the mattress business of every individual furniture dealer or concern now stocking or able to stock Sealy and Imperial products.

III. The salesman binds himself

(A) to pay all traveling and other expenses attached to covering his said territory and visiting the trade at regular and reasonable intervals according to a two weeks route list supplied the Company Monday of each week.

(B) to comply fully with the rules and instructions of the Company; whether specifically given or included in their sales manual for the information and guidance of their sales force.

(C) to display the complete line and exhibit samples on every call.

(D) to report in detail each call on regular forms provided.

(E) to sell only the goods of the Company.

(F) to engage in no other business claiming any portion of his time or attention.

(G) to make his headquarters within his territory.

(H) to report fully all dealer complaints, after a personal inspection if possible, but not to make any adjustments himself or to bind the company thereto except on written instructions from the company.

(I) to supply credit department of the Company with all information requested or reasonably deemed necessary in passing inteligently on any first account or other order or accounts.

(J) to return on the termination of this contract, his sales manual, tick book, celluloid photographic reproduction book and all other supplies constituting his salesman's outfit according to list hereto attached and made a part hereof.

(K) to give to the company a $5000.00 fidelity bond, premium upon which to be paid by the Company, for the faithful performance of his duties both expressed and reasonably implied by this contract, and the return or accounting for all property of the company whatsoever that may be supplied him for business purposes, or entrusted to him in carrying out the terms and provisions of this contract.

IV. The company binds itself to pay to the salesman, during the life of this contract a seven (7) percent commission on all personally taken orders on Sealy labeled products, accepted by the company and shipped into his territory, and five (5) percent commission on all Imperial labeled products, accepted by the company and shipped into his territory, both commissions additionally applying to all mail orders for above labeled products received from said territory, accepted by the company and shipped into his territory while and as long as the salesman is actively cultivating said territory, but not thereafter, but said commissions shall not apply to such orders as may be taken from time to time by residence or house-to-house solicitors, whose use and employment shall be wholly within the discretion of the company.

V. Said commissions are to be paid on or before the fifteenth (15th) day of each month as determined as earned by the salesman during the previous month, with all advances as hereinafter provided for first deducted, but with the company reserving the right to charge back to the salesman at its option any commissions that may have been credited on orders refused or rejected by buyers by reason of incorrectly taken, unauthorized or unsigned orders.

VI. The Company agrees to fill all orders it accepts with every possible dispatch and within operating and market conditions, but any failure on its part for any cause to do so shall not make it liable for any commissions to salesman beyond those commissions due for shipments actually made and goods accepted and retained by consignee. The company retains the right to pass upon all credits, and to reject all orders submitted by salesman which they may not care to accept on account of credit risk or for any other reason.

VII. The company will advance the salesman ———— ———————— a week against earned and unearned but anticipated commissions, which sum can be varied as found advisable by the company in keeping with conditions and the earnings of the salesman.

VIII. It is definitely agreed, however, by the parties hereto and specifically acknowledged by the salesman as binding that if at any time during the terms of this contract the company shall advance to him any money in excess of his earnings, such advance shall be considered as a loan and as a personal obligation to be repaid on demand of the Company if provisions of paragraph II and Section E—paragraph III have not been complied with.

[fol. 130E] L. E. Isaack.

Sealy, St. Paul

Iowa

In reply to your telegram of today, we will give you below copy of the outline.

All north of but not including Allamakee, Clayton and Delaware Counties.

In Buchanan Co., all north of and including Winthrop, Independence & Jesup.

In Blackhawk County, all north of and including Raymond, Waterloo and Cedar Falls.

None of Grundy Co.

In Hardin County, all north of and including Ackley, Iowa Falls & Wilke.

In Hamilton Co., all north of and including Williams, Reinecker, Webster City and Highview.

In Wester Co., all north of and including Dacomb, Judd, Telpum and Fort Dodge and Tara.

In Calhoun County, all north of and including Knierim, Richards, Rockwell City and Lavinia, on the I. C. Ry.

In Sac County, north of and including Lytton, Sac City, Early and Schaller.

In Ida Co., all north of and including Galva, Halstein & Cushing.

In Woodbury Co., all north of and including Correctionville, Noville Bronson, Sargents Bluffs and Sioux City.

Very truly yours, Sealy Mattress Company

LEI

[fol. 131E] Salesman's Contract

THIS CONTRACT OF EMPLOYMENT, made and entered into by and between The Sealy Mattress Company, a department of the Sugarland Industries, (an association of Trustees, composed of I. H. Kempner and D. W. Kempner of Galveston County, Texas, and G. D. Ulrich and W. T. Eldridge, Jr., of Fort Bend County Texas, acting under that certain Declaration of Trust, dated January 1, 1919, a copy of which is deposited, for the information of all concerned, with the Texas Bank & Trust Company of Galveston, Texas), of Sugar Land, Fort Bend County, Texas, hereinafter referred to as the "Company" and

_____ _____

hereinafter referred to as "Salesman," provides,

I. In consideration of the respective advantages accuring to both parties hereto, and the mutual covenants and agreements hereinafter fully set forth, the salesman is to offer the goods of the company in the following described territory:

II. The salesman is to devote his entire time and attention, to faithfully promoting the interests of the company to soliciting the mattress business of every individual furniture dealer or concern now stocking or able to stock Sealy and Imperial products.

III. The salesman binds himself

(A) to pay all traveling and other expenses attached to covering his said territory and visiting the trade at regular and reasonable intervals according to a two weeks route list supplied the Company Monday of each week.

(B) to comply fully with the rules and instructions of the Company; whether specifically given or included in their sales manual for the information and guidance of their sales force.

(C) to display the complete line and exhibit samples on every call.

(D) to report in detail each call on regular forms provided.

(E) to sell only the goods of the Company.

(F) to engage in no other business claiming any portion of his time or attention.

(G) to make his headquarters within his territory.

(H) to report fully all dealer complaints, after a personal inspection if possible, but not to make any adjustments himself or to bind the company thereto except on written instructions from the company.

(I) to supply credit department of the Company with all information requested or reasonably deemed necessary in passing inteligently on any first account or other order or accounts.

(J) to return on the termination of this contract, his sales manual, tick book, celluloid photographic reproduction book and all other supplies constituting his salesman's outfit according to list hereto attached and made a part hereof.

(K) to give to the company a $5000.00 fidelity bond, premium upon which to be paid by the Company, for the faithful performance of his duties both expressed and reasonably implied by this contract, and the return or accounting for all property of the company whatsoever that may be supplied him for business purposes, or entrusted to him in carrying out the terms and provisions of this contract.

IV. The company binds itself to pay to the salesman, during the life of this contract a seven (7) percent commission on all personally taken orders on Sealy labeled products, accepted by the company and shipped into his territory, and five (5) percent commission on all Imperial labeled products, accepted by the company and shipped into his territory, both commissions additionally applying to all mail orders for above labeled products received from said territory, accepted by the company and shipped into his territory while and as long as the salesman is actively cultivating said territory, but not thereafter, but said commissions shall not apply to such orders as may be taken from time to time by residence or house-to-house solicitors, whose use and employment shall be wholly within the discretion of the company.

V. Said commissions are to be paid on or before the fifteenth (15th) day of each month as determined as earned

by the salesman during the previous month, with all advances as hereinafter provided for first deducted, but with the company reserving the right to charge back to the salesman at its option any commissions that may have been credited on orders refused or rejected by buyers by reason of incorrectly taken, unauthorized or unsigned orders.

VI. The Company agrees to fill all orders it accepts with every possible dispatch and within operating and market conditions, but any failure on its part for any cause to do so shall not make it liable for any commissions to salesman beyond those commissions due for shipments actually made and goods accepted and retained by consignee. The company retains the right to pass upon all credits, and to reject all orders submitted by salesman which they may not care to accept on account of credit risk or for any other reason.

VII. The company will advance the salesman ———— ———————— a week against earned and unearned but anticipated commissions, which sum can be varied as found advisable by the company in keeping with conditions and the earnings of the salesman.

VIII. It is definitely agreed, however, by the parties hereto and specifically acknowledged by the salesman as binding that if at any time during the terms of this contract the company shall advance to him any money in excess of his earnings, such advance shall be considered as a loan and as a personal obligation to be repaid on demand of the Company if provisions of paragraph II and Section E—paragraph III have not been complied with.

[fol. 132E] Buffalo factory territory outline for *Pennsylvania*

N. Y. on another sheet

The following section of Pennsylvania is to be supplied by that factory

In Crawford County:

Beaver Center, Conneautville Station, Conneautville, Norrisville, Hayfield, Guys Mills, Fauncetown, and on to Southeast County line, taking in Titusville.

All of Warren, McKean and Potter Counties.

In Lycoming County:

all towns north of but not including Jersey shore Junction, Jersey Shore, Level, Linden, Newberry Junction and newberry. That is, all towns north of Jersey Shore Junction on the New York Central will be served by you, but not those towns north of, nor Williamsport, on the Pennsylvania.

All of Tioga County.

[fol. 133E] The Buffalo factory serves the following in *New York* state

The territory adjacent to Bualo in New York, and according to the outline below is to be served from that factory.

All of Broome, Chenango, Madison Counties.

All towns directly west of but not including the town of Herkimer in Herkimer County, and all towns on D. L & W railway in Southern part of Herkimer County. That is, the towns of Richfield Springs, Millers Mills, Winfield, etc.

All of Oneida County except towns on New York Central and intermediate points of Prospect Junction, Remsen, Delavan, Freeport Station, Anos, White Lake and Otter. These are on the New York Central leading out of Herkimer.

All of Lewis and Stillwater Counties.

Very truly yours, Sealy Mattress Company.

[fol. 134E] SEALY CORPORATION TERRITORY

New Orleans Factory

Louisiana

The entire State of Louisiana south of the V. S. & P. Railway, running from Shreveport east across the State.

Mississippi

All of the State south of but not including those points on the A. & V. Ry. That is, all south of Vicksburg & Meridan.

Alabama

All of Mobile, Baldwin, Washington, Choctaw, Marengo, Clarke and Escambia Counties, and part of Monroe, Wilcox and Conecuh Counties.

Florida

All of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Taylor, Citrus, Pinellas, Manatee, Jackson, Gadsden, Calhoun, Liberty, Franklin, Wakuela, Leon, Jefferson, Hernando, Pasco, Hillsborough, DeSoto, Lee, and part of LaFayette, Levy and Polk Counties.

In stating "part" of counties, we mean to convey that approximately half of the county mentioned comes under the outline, and always towns on railroads nearest to the factory point.

Mebane North Carolina Factory

North Carolina

The entire State

South Carolina

All of the State with the exception of these counties. Abbeville, Aiken, Anderson, Asper, Berkeley, Beaufort, Bamberg, Barnwell, Charleston, Colleton, Dorchester, Edgefield, Greenwood, Hampton, Oconee, Pickens, McCormick.

Tennessee

All of Johnson, Sullivan, Carter, Unicoi, Granger, Washington, Greene, Hawkins and Hancock Counties.

Virginia.

The towns of Danville and Martinsville only.

Richmond Virginia, Factory

This factory also holds contract covering Baltimore territory, which is included below.

Virginia

All the State with the exception of towns of Danville and Martinsville,

Kentucky

All of Pike County.

West Virginia

Jefferson, Berkeley, Pacahontas, Greenbrier, Fayette, Raleigh, Wyoming, McDowell, Mercer, Monroe and Sum- [fol. 135E] mers Counties. Half of Mingo, Logan and Nicholas Counties.

Pennsylvania

All of Fulton, Franklin, Perry, Cumberland, Adams and York Counties, and half of Juniata and Huntingdon.

Maryland

All of this state with the exception of that part west of the towns of Hancock, and all on line with Berkley Springs, W. Va.

Brooklyn Factory

New Jersey

All of the Counties of Susses, Warren, Morris, Passaic, Bergen, Essex, Hudson, Union, Middlesex and half of Sommerset, Hunterdon and Monmouth Co.

New York State

All of Suffolk, Nassau, Westchester, Rockland, Orange, Ulster, Dutchess, Putnam, Delaware, Greene, Columbia, Rensselaer, Albany Schoharie, Otsego, Montgomery, Fulton, Herkimer and Hamilton Counties, also all of Schenectady County. South half of Saratoga County.

Connecticut

All of Litchfield, Fairfield, New Haven, Hartford, Middlesex Counties.
Half of Tolland and New London Counties.

Massachusetts

Berkshire County. Western half of Hampshire and Hampden Counties.

Boston Factory

New York State

All of Clinton, Franklin, Essex, Warren and Washington Counties. Northern Half of Saratoga County.

Rhode Island

This entire State

Connecticut

All of Windham Co. and eastern halves of Tolland and New London Counties.

Massachusetts

All of Nantucket, Dukes, Barnstable, Plymouth, Bristol, Norfolk, Middlesex Essex, Worcester and Franklin. Eastern halves of Hampshire and Hampden Counties.
All of these States. Main, Vermont, New Hampshire.

Cleveland, O. Factory

Counties of Ashtabula, Lake, Geauga, Trumbull, Portage, Stark, Summit, Cuyahoga, Lorain, Medina, Wayne, Holmes, Coshocton, Licking, Perry, Mairfield Hocking,

Ross, Pickaway, Madison, Union, Marion, Wyandot Seneca, Eric, Huron Crawford, Morrow, Richland, Knox, Ashland, Delaware, Perry, Franklin, Hocking.

[fol. 136E] Half of Sandusky, Hancock and Marion Counties. Half of Logan, Champaign, Clark and Mahoning Counties.

There are other counties divided that belong to this factory to Ohio but their division is so written up that we do not think it will amount to much in your calculation and for that mater are giving only the ones above.

Pittsburgh, Pa. Factory

State of Ohio

Counties of Adams, Scioto, Lawrence, Balliam Meigs, Jackson, Pike, Vinton, Athens, Washington, Morgan, Noble, Monroe, Guernsey, Blemont, Jefferson, Harrison, Columbiana.

Half of Mahoning, Carroll, Tuscamawas, Muskingum Counties.

Pennsylvania

All of Greene, Washington, Allegheny, Beaver, Lawrence, Mercer, Butler, Venango, Forest, Clarion, Armstrong, Westmoreland, Fayette, Somerset, Bedford, Blair, Cambria, Indiana, Jefferson, Elk, Cameron, Clearfield, Clinton, Center, Union, Snyder Counties.

Half of Huntingdon, and Mifflin County, and Crawford county.

Maryland

All west of but not including town of Hancock.

West Virginia

Counties of Hancock, Broome, Ohio, Marshall, Wetzel, Monogalia, Preston, Marion, Taylor Harrison, Tyler, Pleasant, Dooridge, Lewis, Barbour, Upshur, Tucker, Mineral, Hampshire, Morgan.

Indianapolis Factory

West Va. counties of Wayne, Cabel, Mason, Jackson, Putnam, Lincoln, Roane, Wirt, Wood.

Kentucky

All counties east of the following ones, with the exception of Pike, which is the only county in Kentucky that goes to Richmond.

Allen, Barren, Hart, Larue, Nelson, Bulpitt, Jefferson, Washington.

Ohio

Counties of Brown, Highland, Clermont, Hamilton, Butler, Warren Clinton, Greene, Montgomery, Preble, Darke, Miami, Shelby.

Half of Mercer, Auglaize, Logan, Champaign and Clark Counties.

Indiana

All the State with the exception of Steuben and DeKalf Counties, and half of LaGrange, Noble and Allen Counties

The factory in St. Louis and Chicago also operate under the direction of the Indianapolis factory and we are therefore including all their territory now under Indianapolis factory, and not setting the specific lines because it appears unnecessary. If you desire, specific lines will be sent for each factory however.

[fol. 137E] Illinois

All of this State

Michigan

The Counties of Berrien, Cass, Saint Joseph, Branch, Van Buren, Kalamazoo, Allegan.

Michigan

Half of Ottawa Barry and Calhoun Counties.

Wisconsin

All south and southeast of the following counties, and inclusive of them. Vernon, Juneau, Adams, Porgage, Shawano, Oconto and Marinette. Half of these counties. LaCrosse, Monroe, Wood, Marathon, Forest and Langlade.

Iowa

All east of the Des Moines River and as far north of on the east side of the river as Webster County. Then, east, inclusive of these counties, and all south of them. Hamilton, Hardin, Grundy, Blackhawk, Buchana, Allemakee, Clayton and Delaware Counties.

Missouri

All east of but not including Schuyler, Adair, Macon, Randolph, Howard, Hooper, Moniteau, Morgan, Camden, LaClede, Texas and Howell Counties.

Also, not including Oregon, Ripley, Butler, Stoddard, New Madrid and Mississippi Counties.

St. Paul Factory

All of the States of S. Dakota, North Dakota and Minnesota.

Iowa

These counties. Lyon, Osceola, Dickenson, Emmet, Kossuth, Winnebago, Worth Mitchell, Howard, Winneshiek, Fayette, Chickasha, Bremer, Butler, Franklin, Floyd, Cerrogordo, Hancock Wright, Humboldt, Pocahontas, Palo Alto, Buena Vista Clay, Cherokee, Plymouth, Sioux O'-Brien.

Wisconsin.

All that part of the State not specified for the Indianapolis outline at the top of this page.

Kansas City Factory

Iowa

The remaining counties, which will be those not specified in the above two outlines.

Nebraska

All of this State, with the exception of Sioux, Scotts Bluff, Banner, Kimball Cheyenne, Morrill, Box Butte, Dawes, Garden, Deuel, Dundy, Chas. Perkins, and half of Sheridan and Keith Counties.

Kansas

All of this State with the exception of Stanton, Hamilton [fol. 138E] Greeley, Wallace, Sherman, Thomas, Logan, Wichita and Kearney Counties.

Missouri

Ozark, Douglas, Texas, Wright, Webster, Dallas, Camden, Morgan, Moniteau, Cooper, Howard, Randolph, Macon, Sullivan, Putman Counties, and all west of them.

Little Rock Factory

Arkansas

All this state with the exception of Lee County, and half of these. Crittenden St. Francis, Monroe and Phillips.

Louisiana

That part of the State not specified for New Orleans. That is, all points on and north of the V. S. & P. Railway, adjacent to Arkansas.

Memphis Factory

Arkansas

All of Lee County and half of these counties. Crittenden, St. Francis, Monroe and Phillips.

Missouri

Oregon, Ripley, Butler, Stoddard, New Madrid, Mississippi, Premiscot and Dunklin Counties.

Kentucky

Louisville and the following counties, and all west of them. Allen, Barren Hart, Larue, Nelson Bulpitt, Jefferson Washington.

Tennessee

Sumner, Davidson, Williamson, Maury and Lawrence Counties, and all west of them.

Mississippi

All points on the A. & V. Railroad and north of it, adjacent to Memphis. That is, the part of the state not covered by New Orleans.

El Paso Factory

Texas

Valverde County, Crockett, Upton, Midland, Ector, Winkler and all counties west of these.

New Mexico

Valencia, Bernalillo, Torrance, Quadalupe, and Quay Counties, and half of San Migel, Santa Fe, Andoval and McKinley Counties.

Arizona

All of Arizona with the exception of Yuma and Mohave Counties, and half of Yavapia County.

[fol. 139E] Denver Factory

All of Colorado

New Mexico

That part of the State not specified for the El Paso factory.

Kansas

That part of the State not given to Kansas City.

Nebraska

That part not given to Kansas City.

Wyoming

All of Laramie, Platte, Goshen, Niobaara, Weston, Crook, Converse, Albany, Carbon, Natrona Counties. Half of Sweetwater and Fremont Counties.

Salt Lake City Factory

All of the State of Utah.

Wyoming

That part of the State not given to Denver.

Nevada

All of Elko, White Pine, Eureka, Lander, Humboldt Counties. Half of Washoe Churchill and Lincoln Counties.

Idaho

Fremont, Teton, Jefferson, Butte, Minidoka, Powers, Bingham, Bonneville, Hancock, Bear Lake, Franklin, Oneida, Cassia, Twin Falls and Owyhee Counties. Half of Canyon, Ada, Elmore, Gooding and Lincoln Counties.

Los Angeles Factory

This factory operates a branch in San Francisco, and between the two plants they serve the entire tate of California.

That part of Nevada not specified for the Salt Lake City factory.

That part of Arizona not specified for El Paso.

Tigard Oregon Factory

All the State of Washington and Oregon and Montana. between the two plants they serve the entire State of Cali- However, the Los Angeles factory expects to open a plant in Seattle, at which time we will advise you.

Oklahoma City Factory

Texas

All north of and including these counties. Cochran, Hockley, Lubbock, Crosby, Dickens, King, Knox Taylor, Archer, Clay.

All of Oklahoma.

[fol. 140E] Detroit Factory

Michigan

That part of the State not covered by the outline given under heading of Indianapolis factory.

Indiana

That small portion not covered by the Indianapolis factory. That is, Steuben & DeKalf Counties, and half of LaGrange, Noble and Allen Counties.

Ohio

Williams, Fulton Lucas, Ottawa, Defiance, Henry, Wood, Paulding, Putnam, Van Wert, Allen Counties, and Sanddusky County. Half of Mercer and Auglaize.

Sugar Land

All of Texas except that listed for Oklahoma City and El Paso.

[fol. 141E] Territory Specifications

State of Louisiana and certain counties in Mississippi and Alabama where L.C.L. freight rates from New Orleans to local points are lower than ones applying from Birmingham or Memphis.

Atlanta

Georgia, Florida and to points in Alabama, Tennessee and South Carolina at which lower freight rates are effective on shipments from New Orleans, Memphis, Louisville and Mebane, North Carolina.

Mebane

All North Carolina and such portions of South Carolina, Tennessee and Virginia where Mebane freight rates are lower than those applying from Atlanta, Memphis or Richmond.

Richmond

Richmond and all adjacent territory in every direction until Richmond railroad freight rates meet lower ones from Mebane, Louisville, Cincinnati, Pittsburgh and Baltimore.

Baltimore

Baltimore and Washington D. C., and adjacent territory in all directions to points at which lower freight rates are effective on shipments from Richmond, Va., Pittsburgh, Pa., and Philadelphia.

New York City

Metropolitan New York and territory extending in all directions to points at which lower freight rates are effective on shipments from Philadelphia, Pittsburgh, Buffalo and Boston.

Boston

All New England, that is, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut except such portions if any of Vermont and Rhode Island and such portions Connecticut and Mass., where Buffalo and New York City railroad rates are lower than those from Boston.

Buffalo

Buffalo and adjacent territory in every direction until encountering lower railroad freight rates from Boston, New York City, Pittsurgh and Cleveland—that is, lower than those of Buffalo's. Definitely defined territory later advised.

Cleveland

Cleveland and adjacent territory in all directions until meeting lower railroad freight rates from Buffalo, Pittsurgh, Cincinnati, Indianapolis and Detroit. More definnitely defined territory later advised.

Pittsburgh

Pittsburgh and territory in all directions to points at which lower freight rates are effective on shipments from Cleveland, Cincinnati, Mebane, N. C., Richmond, Va., Baltimore, Philadelphia and Buffalo, New York.

Indianapolis

No specifications.

Detroit

Detroit and all adjacent territory in every direction until [fol. 142E] meeting lower railroad freight rates from Cleveland, Cincinnati, Indianapolis, and Chicago. More definitely defined territory later advised.

St. Paul

States of Minnesota, North Dakota, South Dakota, Iowa, Wisconsin and Montana, except where lower freight rates apply from the Cities of Milwaukee, Omaha, Des Moines and Butte, Montana.

Chicago

Chicago and adjacent territory extending to points at which lower freight rates are effective on shipments from Detroit, Milwaukee, St. Louis and Indianapolis.

Little Rock

All Arkansas except Jonesboro and Paragould.

Memphis

Territory adjacent Memphis and East of Mississippi River in the States of Tennessee, Mississippi, Alabama, Georgia and Kentucky, West and South of Louisville, Kentucky, inclusive, to points at which lower freight rates are effective on shipments from New Orleans, Atlanta, Mebane, N. C., and St. Louis; also Jonesboro and Paragould, Arkansas, and territory East of Doniphan Missouri and South of Delta, Missouri.

El Paso

El Paso and adjacent territory in every direction until meeting lower railroad freight rates from Los Angeles, California, Denver, Colorado, Sugar Land, Texas, Dallas and Fort Worth, Texas and Chihuahua, Mexico.

Denver

Denver and all points from Denver having lower freight rates than shipments from Omaha, Kansas City, Oklahoma City, El Paso, Salt Lake City and Butte, Montana.

Salt Lake City

Salt Lake City and adjoining territory in every direction to points at which lower railroad freight rates are effective from Denver, El Paso, Texas, Los Angeles, San Francisco, Portland and Butte, Montana.

San Francisco

San Francisco and territory in all directions to points at which lower freight rates are effective on shipments from Los Angeles, Salt Lake City, Denver, Butte, Montana and Portland, Oregon.

[fol. 143E] THE SEALY CORPORATION

National and Railroad Sts.
Houston, Texas

Houston—Jan. 21st, 1928

Boston Territory

Boston Sealy territory comprises the following, subject to the first class LCL freight rate in effect January 1st, 1926: (That is, fixed rule for establishing boundary where territories meet)

The States of Maine
New Hampshire
Vermont
Rhode Island

Plus the following Counties in New York state:

Franklin	Warren
Clinton	Saratoga
Essex	Washington

Plus that portion of Massachusetts lying East (or North) of the following Counties in Massachusetts:

Monroe	Hadley
Florida	Pelham
Savoy	Prescott
Plainfield	Enfield
Cummington	Ware
Goshen	Palmer
Williamsburg	Brunfield
Hatfield	Holland

Plus that portion of Connecticut lying East of the following Counties in Connecticut

Enfield	E. Hampson
E. Windsor	E. Haddon
S. Windsor	Chester
Manchester	N. Saybrook
Glastonburg	Essex
Marlborough	S. Saybrook

[fol. 144E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 29

Houston, Tex. 8-14-26

Minutes of Executive Committee Meeting, July 7th, 1926.

* * * * * * *

7. The question of territory between Tigard and Seattle was thoroughly discussed, all members regretting the absence of Mr. Bowersox.

8. The territory dividing line between Seattle and Tigard was submitted by Mr. Bonesteele, who presented documents and agreements between the Tigard and Seattle factories, made by Mr. Wilder, sales manager for the Seattle factory interests, showing an agreement between them had been reached. As a precedent had been established by allowing the various factories to adjust territories between themselves. The Committee voted the territory arrangement settled unless Mr. Bowersox could prove Mr. Wilder had not the authority to make said agreement.

[fol. 145E] 9. Motion was made, seconded and carried to eliminate Butte as a factory point, dividing that territory by mutual agreement between St. Paul, Denver, Seattle and Tigard. In Mr. Bowersox absence, Mr. King was appointed by the committee to represent him and the following allotments were determined:

10. Seattle to serve all the territory covered by the Northern Line of the Great Northern Ry. until meeting St. Paul lower freight rate at Adams. St. Paul to serve all the territory east of vertical line through Adams and Columbus, including those towns (unless the freight rate divided at Billings when said line would run through that point instead of Columbus). Denver to serve all the territory West of St. Paul's line and south of Seattle's, since Mr. Bonesteele felt he could not profitable work the territory served by the Northern Pacific Ry., (which otherwise would have been Tigard's territory).

* * * * * * *

[fol. 146E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 31-A

STATE OF DELAWARE

Office of Secretary of State

I, CHARLES H. GRANTLAND, Secretary of State of the State of Delaware, Do Hereby Certify, that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Sealy, Incorporated", as received and filed in this office the twenty-second day of August, A. D. 1933, at 1 o'clock P. M.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Dover, this twenty-second day of August, in the year of our Lord one thousand nine hundred and thirty three.

Charles H. Grantland, Secretary of State.

Secretary's Office, 1855 Delaware-1793.

Received for Record this twenty-third day of August, A. D. 1933.

Albert Stetser, Recorder.

[fol. 147E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 31-B

By-Laws of Sealy, Incorporated

* * * * * * *

[fol. 148E] Meetings of Stockholders

4. All meetings of stockholders shall be held at the office of the corporation in the City of Houston, State of Texas.

The annual meeting of stockholders shall be held on the first Monday in November in each year, beginning in the year 1934, (if that day fall on a legal holiday, then on the next day following) at two o'clock in the afternoon, at which meeting they shall elect by ballot, by plurality vote, a board of directors.

* * * * * * *

[fol. 149E] Each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by written proxy, signed by him, for each share of voting stock held by him, but no proxy shall be voted on after three years from its date, unless it provides for a longer period, but such right to vote shall be subject to the right of the board of directors to close the transfer books or to fix a record date for voting stockholders as hereinafter provided and if the directors shall not have exercised such right, no share of stock shall be voted on at any election for directors which shall have been transferred on the books of the corporation within twenty days next preceding such election.

* * * * * * *

[fols. 150E-152E] Directors

5. The property and business of the corporation shall be managed and controlled by its board of directors, four in number.

The directors shall hold office until the next annual elec-

tion and until their successors are elected and qualified. They shall be elected by the stockholders, except that if there be a vacancy in the board by reason of death, resignation or otherwise, such vacancy shall be filled for the unexpired term by the remaining directors, though less than a quorum, by majority vote.

* * * * * * *

[fols. 153E-154E] Executive and Other Committees

8. The board of directors may, by resolution of resolutions passed by a majority of the whole board, designate an executive committee and one or more other committees, each to consist of two or more of the directors of the corporation.

* * * * * * *

[fols. 155E-160E] Officers of the Corporation

10. The officers of the corporation shall be a president, one or more vice-presidents, a secretary, a treasurer, counsel and such other officers as may from time to time be chosen by the board of directors. The president and vice-presidents shall be chosen from among the directors.

* * * * * * *

The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed either with or without cause at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the affirmative vote of a majority of the whole board of directors.

* * * * * * *

[fol. 161E] Dividends

23. Dividends upon the capital stock may be declared by the board of directors at any regular or special meeting and

may be paid in cash or in property or in shares [fol. 162E] of the capital stock. Before paying any dividend or making any distribution of profits, the directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may alter or abolish any such reserve or reserves.

* * * * * * *

[fol. 163E] Amendments of By-Laws

28. These by-laws may be amended, altered, repealed or added to at any regular meeting of the stockholders or board of directors or at any special meeting called for that purpose, by affirmative vote of a majority of the stock issued and outstanding and entitled to vote or by a majority of the whole authorized number of directors, as the case may be.

[fols. 164E-165E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 31-D

Amended By-Laws of Sealy, Incorporated

These amended By-Laws of Sealy Incorporated adopted regularly at the special meeting of the Board of Directors of the Corporation, held the 12th day of June, 1936 at St. Louis, Missouri.

Witness as to both:

H. E. Wolf, President. Earl H. Bergmann.

* * * * * * *

[fol. 166E] Meetings of Stockholders

4. Meetings of the stockholders shall be held at the office of the corporation in the City of Pittsburgh, State of Pennsylvania, or at such other place or places as the board of directors may, from time to time, designate.

Unless the board of directors shall set a different time, the annual meeting of stockholders shall be held on the second Friday in January in each year (if that day fall on a legal holiday, then on the next business day following) at two o'clock in the afternoon, at which meeting or an adjournment thereof they shall elect by ballot, by plurality vote, a board of directors.

No change of the time or place of a meeting for the election of directors, as fixed by the by-laws, shall be made within sixty days next before the day on which such election is to be held. In case of any change in such time or place for such election of directors, notice thereof shall be given to each stockholder in person, or by letter mailed to his last known post office address, at least twenty days before the election is held.

Each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by written proxy, signed by him, for each share of voting stock held by him, but no proxy shall be voted on after three years from its date, unless it provides for a longer period, but such right to vote shall be subject to the right of the board

of directors to close the transfer books or to fix a record [fol. 167E] date for voting stockholders as hereinafter provided and if the directors shall not have exercised such right, no share of stock shall be voted on at any election for directors which shall have been transferred on the books of the corporation within twenty days next preceding such election.

Special meetings of the stockholders may be called by the president, and shall be called on the request in writing or by a vote of a majority of the board of directors or on demand in writing of stockholders of record owning a majority in amount of the capital stock outstanding and entitled to vote.

Notice of all meetings shall be mailed to each stockholder of record at his or her last known post office address for annual meetings twenty days and for special meetings ten days prior thereto.

The holders of a majority of the stock outstanding and entitled to vote shall constitute a quorum, but the holders of a smaller amount may adjourn from time to time without further notice until a quorum is secured.

Directors

5. The property and business of the corporation shall be managed and controlled by its board of directors consisting of eight directors.

The directors shall hold office until the next [fols. 168E-176E] annual election and until their successors are elected and qualified. They shall be elected by the stockholders, except that if there be a vacancy in the board by reason of death, resignation or otherwise, such vacancy shall be filled for the unexpired term by the remaining directors, though less than a quorum, by majority vote.

No person shall be elected a director unless he shall be a representative of a stockholder of the corporation which stockholder shall have in effect with the corporation a contract designated "Manufacturer's Contract" granting to such stockholder the right to manufacture and sell Sealy Products under certain conditions. If at any time any director shall cease to represent such a stockholder, his office shall automatically become vacant.

The board of directors may at any time, by amendment

of the by-laws, increase the number of its members and may elect additional members to fill the offices so created, who shall hold office until the next annual meeting of the stockholders and until their successors are elected and qualified.

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[fols. 177E-178E] Limitation upon ownership of Stock

21(a). No Licensee of this corporation, nor any stockholder of a corporation which is a Licensee, nor a member of a partnership which is a Licensee may, directly or indirectly own or control more than 38% of the Common Stock of this corporation. This provision of the By-Laws may not be altered, amended, or abrogated except by the affirmative vote of all of the stock issued and outstanding and entitled to vote.

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[fols. 179E-181E] Notices

26. Notice required to be given under the provisions of these by-laws to any director, officer or stockholder shall not be construed to mean personal notice, but may be given in writing by depositing the same in a post office or letter-box, in a post-paid sealed wrapper, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Waiver of Notice

27. Any stockholder, officer or director may waive, in writing, any notice required to be given under these by-laws, whether before or after the time stated therein.

Amendments of By-Laws

28. These by-laws may be amended, altered, repealed or added to at any regular meeting of the stockholders or board of directors or at any special meeting called for that purpose, by affirmative vote of a majority of the stock issued and outstanding and entitled to vote or by a majority

the Pittsburgh office with the necessary patent or trademark numbers so that copies could be obtained from Washington. The Pittsburgh office is then to go over these very carefully and endeavor to devise combination patents and trademarks from the lot. Mr. Wolf emphasized that this cooperation, on the part of the factories, might be of material assistance in the development of a light innerspring unit. Mr. Wolf suggested that all factories give some thought to this innerspring unit, and have their mechanical departments work out some ideas, as the combination of such a unit with Nukraft would be a tremendous impetus to Sealy sales.

[fols. 204E-210E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 33

Minutes of Sealy meeting, Akron, Ohio—August 7th through August 9th, 1936.

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[fols. 211E-212E] Mr. J. R. Haas made the recommendation that the group no longer recognize Mr. E. C. Haas as a member of the Board of Directors since, under the By-Laws, his office on the Board of Directors became vacant upon transfer of the Kansas City territory.

Mr. Cady made a motion that Mr. Charles H. Friedberg be recognized as the owner of ten shares of Sealy, Incorporated stock even though the transfer of the said stock has not been made of record. Mr. Stein seconded the motion. Question. Unanimously approved.

Mr. Haas nominated Mr. Friedberg as a member of the Board of Directors of Sealy, Incorporated. Mr. Cady seconded the motion. Mr. Cady moved that nominations be closed and that a unanimous vote be cast for Mr. Friedberg. The Secretary was instructed to cast the ballot. Approved by the directors unanimously.

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[fol. 213E] Mr. Rosenfeld was then requested to enlarge on the changed set-up proposed by Mr. Wolf. Mr. Rosenfeld said the present contract was excellent from a legal point of view, but that it failed to provide for nationwide expansion. Mr. Rosenfeld stated that no high grade manufacturer would like the designation "sub-manufacturer", nor the idea of 37½¢ out of each 50¢ royalty he paid going into the pocket of some member of the group, without any return for him. Mr. Rosenfeld said that the present Sealy program gave Sealy very little working capital, and that the unrelated distribution of Sealy territories was another serious flaw. He emphasized that new territories should be made available for prospects, which would be free and not allocated to any member, this re-allotment to be made either on the basis of population, or to follow the

of the whole authorized number of directors, as the case may be.

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[fol. 182E] Amendments to By-Laws

New By-Law to be known as 21(a): Limitation Upon Owner of Stock:

No Licensee of this corporation, nor any stockholder of a corporation which is a Licensee, nor a member of a partnership which is a Licensee may, directly or indirectly own or control more than 38% of the Common Stock of this corporation. This provision of the By-Laws may not be altered, amended, or abrogated except by the affirmative vote of all of the stock issued and outstanding and entitled to vote.

New By-Law No. 28:

Except as specifically provided in any By-Law of this corporation these By-Laws may be amended, altered, repealed, or added to at any regular meeting of the stockholders or Board of Directors or at any special meeting called for that purpose, by affirmative vote of a majority of the stock issued and outstanding and entitled to vote or by a majority of the whole authorized number of Directors, as the case may be.

[fol. 183E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 31-E

Minutes of the 21st Semi Annual Meeting of Sealy, Incorporated, held at Lakeshore Drive Hotel, 181 Lakeshore Drive, Chicago, Illinois, July 12th and 13th, 1935.

1. Present:

J. R. Haas, Memphis, Tenn.
E. C. Haas, Kansas City, Mo.
L. G. Haas, Memphis, Tenn.
H. Gouldstone, Portland, Ore.
Nathan Dreeben, San Antonio, Tex.
Morris Stein, Denver, Colo.
H. E. Wolf, Pittsburgh, Pa.
E. H. Bergmann, Cleveland, Ohio
S. Ostrow, Fresno, Calif.
M. P. Cady, Portland, Ore.
E. E. Edwards, Houston, Texas

* * * * * * *

[fol. 184E] 6. The stockholders present in person or by proxy, were as follows:

1. E. E. Edwards (President), representing himself and Sealy Mattress Company of Texas, Houston, Texas.
2. J. R. Haas (Vice-President), representing U. S. Bedding Company, Memphis, Tennessee.
3. M. Stein (Treasurer), representing himself and M. Niernberg, d/b as Colorado Mattress Company, Denver, Colorado.
4. H. E. Wolf (Secretary), representing himself and Fort Pitt Bedding Company, Pittsburgh, Pennsylvania.
5. M. P. Cady, representing Sealy Mattress Company of Oregon, Portland, Oregon.
6. H. S. Gouldstone, also representing Sealy Mattress Company of Oregon, Portland, Oregon.
7. Earl H. Bergman, representing William H. Rosenfeld and Ohio Mattress Company, Cleveland, Ohio.

8. E. C. Haas, representing Imperial Mattress Company, Kansas City, Missouri.
9. L. G. Haas, also representing Imperial Mattress Company, Kansas City, Missouri.
10. S. Ostrow, representing Valley Bedding & Furniture Company, Fresno, California.
11. Thomas H. Cobbs of Cobbs & Logan, Counsel for the corporation, St. Louis, Missouri.

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[fol. 185E] 11. The registering of trademarks, etc., was left to the executive officers to handle.

12. It was unanimously decided to have prepared two forms of contracts for the manufacture and sale of Sealy products in the various territories, No. 1 to be made with each of the present stockholders for the entire territory assigned to him; and No. 2 to be made with other factories selected by any stockholder within his territory for a part of his territory. The stockholder making the selection must be responsible for the factories selected and must sell to that factory some of his stock in this corporation so as to qualify that factory as a stockholder of this corporation and as one interested in its success.

13. It was decided to make said contracts for a term of ten years, with automatic renewal every ten years, unless cancelled by mutual agreement or for violation, to make the provisions strict and to provide for arbitration to determine when a contract should be terminated.

[fol. 186E] 14. The contract shall provide that the factory shall manufacture Sealy products in strict accordance therewith and in strict accordance with the specifications furnished for each article, and shall prescribe severe penalties and the right to cancel the contract for any violation.

15. Each manufacturer shall guarantee and agree to pay to this corporation a profit:

(a) On each mattress and each upholstered box spring priced by this company at $19.75 or more before discounts and allowances, 50¢.

(b) On each mattress and upholstered box spring priced

by this company at $14.75 to $19.75, before discounts and allowances, 25¢.

(c) On each mattress and upholstered box spring priced by this Company at less than $14.75, before discounts and allowances, 15¢.

(d) On each studio couch, 25¢.

(e) On each coil bedspring, 15¢.

(f) On each other article such an amount as may be prescribed by the Board of Directors from time to time.

16. The stockholders to whom are assigned the large territories shall be responsible for the collection of these profits from others appointed in their respective territories and shall collect and remit on said profits to this corporation. For that service, they will be allowed 75% of all of said profits, but will pay 25% of all of said profits to this corporation.

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[fol. 187E] 24. All of the stockholders were of the decided opinion that uniform names and uniform retail prices should be adopted.

25. The names agreed upon were as follows:

1. Sealy Tuftless	$39.50
[fol. 188E] 2. Sealy Rest	$39.50
3. Golden Hours	34.50
4. Natural Rest	29.50
5. Star Special (Hair-Cotton)	29.50
6. Truease	24.50
7. Fast Asleep	19.75

26. The group also proposed and approved names of mattresses that would bear Sealy labels but which could be sold at prices decided upon by any manufacturer.

The names approved were as follows:

1. Foot Ball
2. Biltmore
3. Empire

4. Blackstone
5. Drake
6. Plaza
7. Ambassador
8. Palace
9. Luxuria

There being no further business, the meeting was adjourned.

If, after reading the above minutes, you discover any errors, we will very much appreciate your calling same to the attention of the President, so proper corrections can be made.

Very truly yours, Sealy Incorporated, President
E. E. Edwards.

EEE:TB

[fol. 189E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 31-F

Minutes Sealy Meeting, Hotel Jefferson St. Louis, Mo., June 12-13 1936

The meeting was called to order by the president, Mr. H. E. Wolf, and the following officers and directors were in attendance: Mr. H. E. Wolf, Mr. E. E. Edwards, Mr. J. R. Haas, Mr. Morris Stein, and Mr. E. H. Bergmann.

In addition to the attendance of the officers and directors, Mr. Charles Frieberg, who recently acquired the interest of Mr. Edgar Haas of the Kansas City Factory, was in attendance during the course of the entire meeting and his comments and experience was carefully considered and appreciated.

Mr. Mike Goldman and Mr. Lester Wolf, who is handling the legal matters of the corporation, also were present.

1. It was regularly moved by Mr. Morris Stein and seconded by Mr. J. R. Haas that specifications of standard Sealy Mattresses should be carefully checked and rewritten in accordance with the suggestions offered during the course of the discussion, particularly should they include the adoption of the Enchanted Nite Mattress containing two hundred and seventy-two coils or better or the same mattress could be made with woven wire cover containing not less than two hundred coils and to be finished either [fol. 190E] tuftless or tufted. Mr. J. R. Haas made a further motion to the effect that in the event the Enchanted Nite Mattress was made tuftless that it should be termed "style W", specifications to be effective September the 1st, 1936, and same to be written by Mr. H. E. Wolf of Pittsburgh and copies to be mailed to all of the respective Sealy Plants.

Motion carried unanimously.

2. It was regularly moved by Mr. E. E. Edwards and seconded by E. H. Bergmann to eliminate the use of woven wire from the Super Sealy Rest and to substitute NuKraft therefor.

Motion unanimously carried.

3. It was regularly moved by Mr. J. R. Haas and seconded by Mr. Morris Stein that the corporation be authorized to prepare seven mat books, same to be paid by the corporation and distributed among the Sealy Factories.

Motion unanimously carried.

4. A long educational and exacting discussion was had relative to the advisability of the use of Sisal in Sealy numbers and after a lengthly debate and discussion regarding same upon motion by Mr. J. R. Haas and seconded by Mr. Morris Stein it was unanimously decided to permit the rewriting of standard Sealy Mattresses in the lower [fols. 191E-192E] brackets to include in the specifications the use of Sisal.

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[fol. 193E] 11. Upon motion by Mr. E. H. Bergmann and seconded by Mr. Morris Stein unanimous adoption of the following resolution was ordered.

Resolved: That the books, accounts, and records of the corporation shall be kept at the office of the Corporation in Pittsburgh until further action of the Board.

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[fols 194E-195E] 15. Upon motion by Mr. J. R. Haas and seconded by Mr. E. E. Edwards the following amendments to the By-laws of the corporation were adopted as follows:

A. The second paragraph of Article #2 reading: The corporation may also have ar office of offices in the city of Houston, State of Texas, and such other places as the Board of Directors may designate, to read, The Corporation may also have an office or offices in the city of Pittsburgh, State of Pennsylvania, and at such other places as the Board of Directors may from time to time designate.

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[fols. 196E-197E] No person shall be elected a director unless he shall be a representative of a stockholder of the corporation which stockholder shall have in effect with the corporation a contract designated "Manufacturer's Contract" granting to such stockholder the right to manufacture and sell Sealy Products under certain conditions. If at any time any director shall cease to represent such a stockholder, his office shall automatically become vacant.

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[fol. 198E] 18. Mr. E. E. Edwards stated in a very excellent manner the appreciation of the Sealy Corporation to Mr. Cobb for his years of faithful service and that due to the result of the election of Mr. H. E. Wolf to the corporation presidency and his office being located in Pittsburgh, Pennsylvania, that it would be necessary to have legal talent in Pittsburgh to handle many of the sundry legal matters that constantly arise in a corporation's procedure of business and particularly so at the present time in regard to Sealy Incorporated who at the present time is in the midst of complete rebuilding with a re-
[fol. 199E-201E] sulted change in its contracts and subcontracts that it would be well to have legal talent at Pittsburgh for the facility of the president and that the corporation authorizes and accepts the services of Mr. Lester Wolf, who is a cousin of Mr. H. E. Wolf, and who is connected with a Pittsburgh firm. It was unanimously agreed that this authorization should be adopted.

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[fols. 202E-203E] 28. Individual Sealy trade-marked names and patents were discussed. Mr. Wolf recommended that all the factories pool whatever patents or trade-marks they might have for the benefit of the Corporation. Most of the factories stated that they had very little to offer along that line, but they were perfectly in agreement with the suggestion. All factories were instructed to mail in their trademarks and patents to the Pittsburgh office, or furnish

natural, or normal, trading area surrounding a particular manufacturer in a particular locality.

Mr. Rosenfeld urged that the sub-manufacturer's contract be done away with, and stated opening up rich trading areas would not only assure revenue for Sealy, Incorporated but that the group members would reap a harvest from increased sales in place of label revenue. Mr. Rosenfeld stated his disapproval of the contribution plan as a means of advertising revenue. Outlined that, while the plan might be acceptable at this time, with the increase of the advertising burden Memphis, Houston, and Pittsburgh would soon grow weary of carrying 78% of the burden. Mr. Rosenfeld also enlarged on the danger of national advertising arousing consumer interest which would be diverted into competitive channels due to a lack of proper distribution.

Mr. Rosenfeld then gave the details of the Sleeper contract, the inducements offered to new members, the placement of everyone on an equal basis, and showed the disadvantages of the Sealy plan, which gave the old member everything and the new member practically nothing, as against the Sleeper arrangement. Mr. Rosenfeld summed [fol. 214E] up his recommendations in the following: (1) That present Sealy members forego territories allotted to them and restrict themselves to a limited territory; (2) That the Sealy members divest themselves of the right to a sub-manufacturers agreement and sub-manufacturers revenue; (3) That a new revenue basis be developed to take the place of their present royalty arrangement.

The group adjourned for lunch.

Immediately after lunch the group made a short tour of the B. F. Goodrich plant and saw Nukraft in process of manufacture. On return to the hotel Mr. Rosenfeld was asked to continue and suggested a label which he felt might work out successfully.

Mr. Bergman interrupted the discussion by stating it was obvious that a new territorial arrangement was necessary as, in spite of all the licensee plans that had been made, no actual progress was evident. Mr. Wolf explained that this lack of progress was due to (1) The delay in learning whether Mr. Edwards would be in position to

handle the contract work; (2) The inability of the factories to agree on territorial allotments. Mr. Rosenfeld stated that, under the new territorial handling, these handicaps to progress would automatically be eliminated.

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Mr. Rosenfeld was questioned as to whether he would undertake the task of lining up Sealy licensees. Mr. Rosenfeld stated he would be willing to do the work provided there was no insistence on his making it a full time job as he did not want to sacrifice his legal practice. He stated the expense of such handling would run about $10,000 distributed as follows: $4,000 Actual Compensation, Rent $720, Stenographic and Bookkeeping service, $1200, Stationery and Supplies $500, Postage, Telephone, Telegraph, etc. $600, Travelling Expense $2500, total—— $9520. Mr. Rosenfeld then excused himself and left the group to continue its discussion.

[fol. 215E] Mr. Bergman made a motion that all Sealy members relinquish and release to Sealy, Incorporated territories other than those making up their normal trading area, that is, territories now being worked advantageously by the respective, Sealy factories, and that Sealy, Incorporated be given the power to contract with manufacturers in these territories directly, thus eliminating the sub-manufacturer's contract forming a part of the present plan. Mr. Friedberg seconded this motion. The motion was put to a vote and passed unanimously by the group.

The members were then requested to give a general outline of the territories they were willing to turn back to Sealy, Incorporated. Mr. Cady of the Tigard plant stated that they would be willing to give up part of Idaho.

Mr. Stein expressed his willingness to turn over Minnesota, North Dakota and Nevada, and stated that he might yield a part of Utah provided a highly acceptable manufacturer should require this territory. Mr. Stein is, at present, operating a warehouse in Utah.

Mr. Friedberg stated that he would relinquish his South Dakota interests provided an acceptable manufacturer was located for this territory.

Mr. Haas stated that they would give up South Carolina, North Carolina, and Georgia, and that should Georgia

be split up among two or three manufacturers, and small additional territorial allotments be necessary to satisfy these manufacturers, he would also make whatever concessions were needed along that line. Mr. Haas further expressed his willingness to yield some Kentucky territory provided a responsible Cincinnati manufacturer was interested.

Mr. Bergman stated that they would give up Michigan, and such territory as might be necessary to complete the arrangement with the Balyeat Manufacturing Company retaining only such territory as lies within a 30 to 50 mile radius of Cleveland.

[fols. 216E-217E] Mr. Wolf stated that he would yield whatever Ohio territory was necessary to complete the Balyeat Manufacturing Company contract, also, the District of Columbia, Virginia, Delaware, the western part of New York, and a part of Maryland.

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[fols. 218E-220E] Mr. Haas made a motion that rigid specifications be set up on innerspring units, and that all manufacturers conform strictly with such specifications regardless of whether they manufactured the said units or purchased such units from outside sources. Whereas outside purchases are made the units must be fully equal to the specifications set up by Sealy. Mr. Bergman seconded the motion. Passed unanimously.

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[fol. 221E] Mr. Seitz introduced Mr. Handerson, Advertising Manager of the B. F. Goodrich Company. Mr. Handerson stated that B. F. Goodrich are not in position to commit themselves on advertising until the features of the Robinson-Patman Act have been more clearly defined. Mr. Handerson spoke of the fact that they would have to duplicate assistance given the Sealy group in the case of competitive units. Mr. Haas pointed out that no competitive unit is involved. Mr. Handerson then spoke of the prestige of the Sealy name being enhanced by association with Goodrich, and their feeling that the prestige of

the Sealy name would form a pleasant association for the Goodrich name. Advertising plans were discussed in general.

Mr. Wolf next introduced Mr. Mason of the A. P. Hill Company, Pittsburgh, and Mr. Mason gave the first [fol. 222E] advertising presentation. Mr. Mason distributed portfolios showing a proposed advertising expenditure of $35,062.50. Mr. Mason stated that their research had disclosed that 57% of the direct mattress purchases are made by women, 8% by men, and the remaining percentage represents men consulted, but not active, in the purchase of mattresses. Mr. Mason gave this as the reason for giving women's magazines preference in the magazine advertising set-up. He felt that the Saturday Evening Post would get the men's attention, and combined with the two women's publications, should assure thorough coverage.

Mr. Walker of Walker & Downing made the next presentation, assisted by Messrs. Rogers and Rose. Mr. Walker stated that, in their opinion, it would be impossible to sell both a selling idea and a trade name in a small space and they had outlined their campaign accordingly. Mr. Walker expressed himself as being very much in favor of radio advertising. Mr. Walker also spoke of magazine advertising and stated that a check-up reveals that there is no duplication in the circulation of the Ladies Home Journal and the Women's Home Companion.

W. S. Hill Company presentation was submitted in written form.

Group adjourned for luncheon.

Mr. Grove and Mr. Giles presented Ketchum, MacLeod and Grove's ideas. Mr. Grove spoke first, to the effect that their approach was based on the customer-clerk angle. Mr. Grove then introduced Mr. Giles who gave an outline of their findings and their recommendations for advantageous handling of this "point of sale" problem. Mr. Giles stressed the importance of making each sale since mattress purchases only take place about once in fifteen years.

The last advertising presentation was made by Mr.

Lambert Smith of Smith, Hoffman and Smith. This [fol. 223E] agency had originally been selected to prepare an outline of a Sealy campaign, in accordance with the wishes of the group as expressed at the St. Louis Meeting. This complete outline, together with new features developed since that time, was submitted for approval. Mr. Smith was assisted by Mr. Hoffman and Mr. Taylor.

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The President then introduced Messrs. Brody and Englehardt to the group, stating that these gentlemen are interested in undertaking contact and general promotional work for Sealy, Incorporated. Mr. Brody spoke first relating his past experience, reason for his interest [fols. 224E-225E] in bedding, et cetera. Mr. Brody introduced Mr. Englehardt, stating that Mr. Englehardt has been associated with him in promotional work and that they would like to undertake the handling of the Sealy, Incorporated proposition together. Mr. Englehardt gave an outline of his past experience and showed a dramatized sales manual which he had prepared for the State Automobile Insurance Association, which was of considerable interest to the group.

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[fol. 226E] Messrs. Leguillon and Heldenbrand of B. F. Goodrich joined the group, and the President called on Mr. Leguillon to explain the attitude of the Goodrich Company toward the Sealy group. Mr. Leguillon stated that it is their intention to work for the interest of both units without interjecting themselves into the Sealy set-up. He stated that there could be no conflict between Sealy and Goodrich as Goodrich had no intention of going into the mattress business.

Mr. Leguillon spoke about Sealy's licensee promises and stated that new manufacturers would have to be added to the group before the Goodrich officials would be willing to render any monetary cooperation on advertising, et

cetera. Mentioned the fact that a year ago there had been eight members in the Sealy group, and that there were still only eight a year later.

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After Mr. Leguillon and Mr. Heldenbrand had left the Voting Trust came up for discussion. Mr. Haas ques- [fols. 227E-228E] tioned Mr. Lester Wolf, the Sealy attorney, about various points of law in this connection. A general discussion ensued about how to protect the interests of the eight major Sealy factories. Mr. Haas made a motion that 60% of the stock now owned by Sealy stockholders be placed in the Voting Trust. Motion seconded by Mr. Bergman. Voted on. Passed.

The new manufacturers again came up for discussion, and it was agreed that the addition of such manufacturers to the group should be subject to the approval of adjoining territories.

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[fols. 229E-232E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 34

Executive Committee Meeting, Palmer House, Chicago, Tuesday, October 10th and 28th, 1936.

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[fol. 233E] Mr. Haas then made a motion that Messrs. John M. Brody, Jr. and Wallace H. Englehardt be engaged to become familiarized with the Sealy set-up at the Pittsburgh plant without further delay, their remuneration to be on the basis of $1000 a month for the first three months, and $1250 a month thereafter until the end of the year. If Messrs. Brody and Englehardt are with Sealy, Incorporated at the end of the year their remuneration during that period is to be figured against 25% of the royalties earned during that year, and if their salary was less than the said 25% they are to receive the benefit of the difference. The agreement between Messrs. Brody and Englehardt and Sealy, Incorporated is to include a 90 day probation clause, a six month cancellation clause, and a thirty day cancellation clause after the six month period at the option of either party. Messrs. Brody and Englehardt's salary is to cover all general expense connected with the work of these two men, that is, general administrative expense connected with the assignment as well as travelling expenses, etc.

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[fols. 234E-235E] Prospective licensees were then discussed. Mr. Haas stated that he has two active warehouses in Florida at present and plans to open another in the northern end. He stated that they anticipate a $125,000 year business from Florida, and felt this would be as large a volume as could be done by any factory in that state. Mr. Haas further stated that he would like to

retain North and South Carolina in preference to Georgia provided this was agreeable, but would abide by his original agreement should that be found advisable as the program progressed. Mr. Brody remarked that increased volume would probably absorb Mr. Haas' facilities making it advisable for him to relinquish these territories. Mr. Haas advised that the final determination of the value of each territory should be decided between Mr. Wolf and Messrs. Brody and Englehardt, and he would abide by their decision. Mr. Bergman also expressed his approval of this handling. Five shares, however, are to constitute the minimum, though the licensee may be allowed as long as two years to make payment.

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[fols. 236E-238E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 35

Minutes of Sealy Executive Committee Meeting, Pittsburgh, Pa., August 19th, 20th, 21st, 1937.

August, 19th, (1)—The President opened the Meeting. The following were present: Mr. H. E. Wolf, Mr. J. R. Haas, Mr. Earl Bergmann, Mr. John M. Brody, Jr., Mr. Lester Wolf, and Mr. Robert Culp.

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(2) Mr. Culp was asked to make a report covering the financial situation of the Corporation. The President then requested authority to make a loan for the Corporation as the Corporation did not have sufficient funds to meet current obligations. Mr. J. R. Haas moved that the President be empowered to borrow funds up to $5,000 for the benefit of the Corporation, repayment of this amount to be given preference over everything except current obligations. The $2000 indebtedness to the Fort Pitt Bedding Company is to be paid out of this $5000. Mr. Bergmann seconded the motion. The President called the bank, in the presence of Messrs. Bergmann and Haas, and requested a $1000 loan for the Corporation to take care of immediate requirements.

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[fol. 239E] (13) After some discussion regarding the operation of the Chicago Market Space, Mr. J. R. Haas moved that Mr. Fine, who has been keeping the Space open, be instructed to turn in the key to Sealy, Incorporated, until such time as proper arrangements have been completed for servicing Chicago. Mr. Bergmann seconded the motion. Voted. Approved.

(14) Mr. J. R. Haas moved that, insofar as the Corporation is concerned, no warehouse or salesroom or office is to be operated in Chicago at the present time. Mr. Bergmann seconded the motion. Voted. Approved.

(15) Mr. J. R. Haas moved that Milwaukee be granted permission to handle Chicago temporarily with the definite

understanding that they will relinquish all claims to the Chicago territory as soon as another arrangement is effected. Mr. Bergmann seconded the motion. Voted. Approved.

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[fol. 240E] (20) Mr. Brody made a presentation covering the Crestline Brand. Mr. Brody's outline of Crestline Brand handling was approved with the following suggestions and restrictions: (a) Neither the Durolife Innerspring Unit, Nukraft, nor any special features forming a part of the standard Sealy line, are to be employed in Crestline; (b) There is to be no wholesale price restriction for the time being, but the understanding is to be that such restriction can be placed in effect at a later dater, by action of the Executive Committee, if found desirable; (c) The Cost Committee of Sealy, Incorporated is to set up basic specifications for the various Crestline brackets; (d) The Signature on the mattress, box spring, and studio divan labels is to be either the private brand name of the Sealy plant, Crestline Products Company, Imperial Products, or some similar name, but definitely not Sealy Mattress Company; (e) A special contract, prepared by Lester Wolf, is to be signed by all plants adopting the Crestline brand; (f) The label handling is to be in line with recommendations made at the meeting; (g) A slug, approved by the Executive Committee, is to be used in connection with the advertising of the Crestline Brand, the use of this slug being compulsory whenever such advertising is run; (h) Sealy is to be shown in conventional type, never in script, when used in connection with Crestline; (i) The Crestline Brand is to be confined to tufted mattresses for the time being; (j) The Crestline Brand products are to be sold only within the confines of the present Sealy territories. A copy of Mr. Brody's presentation has been [fol. 241E] made part of these Minutes.

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[fol. 242E] August 17, 1937.

Crestline Brand

Commercial Division of Sealy Recommendations of Messrs. Brody & Englehardt

At the Chicago Meeting, upon adoption by the Sealy members of an off brand for the merchandising of Sealy members, it was decided that Messrs. Brody & Englehardt should submit for Executive Committee approval their recommendations for effective handling of this off brand.

Point 1—Proposed Name—It is proposed that a suitable name should be adopted for the identification of the off brand of goods made by members of Sealy, Incorporated, which name should differentiate the off brand from the present well-established national brand, namely, Sealy. It was suggested by Mr. Englehardt that a suitable name for this off brand is that of Crestline, subject to the possibility of registration of said brand name. Upon investigation through the Government Patent Office, it has been established that this name is available and registration of the name is being provided for through our Corporation counsel. It might be said that the thought behind the selected name is that the first five letters of the off brand name suggest the element of high quality, namely, crest of the wave, or crest of a mountain; in other words, a high point in anything by comparison.

Point 2—Simplicity in Handling. The best way to control the handling of Crestline products through headquarters is that the method which is recognized as the most simple method so far as burdensome or expensive control is concerned. A relatively simple control policy, as recommended by Brody & Englehardt, is one that would embrace the standard practice of Sealy, Incorporated in handling Sealy mattresses. Label handling to be as per the class plan. Royalty payments to be made in advance, and in line with Executive Committee schedule of royalties set up on the basis of wholesale prices. Standard practice [fol. 243E] of search, and efforts toward registration of names and slogans adopted, through Lester Wolf. Mer-

chandising practice as per outline of Brody & Englehardt. Resale price control within 200% limitation. No wholesale price control so that if the manufacturers are to give the merchandise away they can do so without interference from the Sealy Executive Committee. Advertising control simply through re-check by office and agency of local advertising as issued.

Point 3—Control of Manufacturing Specifications. Specifications must, and should be, subject to approval of Sealy, Incorporated and the Executive Committee of Sealy. The Executive Committee of Sealy should arrive at basic specification controls with regard to innerspring constructions, grades of felt and other filling materials, covering materials, and workmanship. Nukraft is not to be employed in the manufacture of any off brand product. It should be emphasized that the theory behind the off brand of Sealy members in the event the members wish this off brand to be in any way identified with their status as a Sealy manufacturer, is that the quality of workmanship and material as exemplified by the off brand be maintained consistent with the principles surrounding the manufacturing practices established in connection with Sealy mattresses. In other words, a quality product must again be the foundation stone for the development of this off brand.

Point 4—Control in Merchandising Practice. In order to develop safely this off brand, both for the present and the future, it is suggested that a sound merchandising plan be instituted. This is essential in order that the off brand will be properly introduced to the Furniture Trade and the consuming public. The basis of this merchandising plan, as proposed, is that from the offset correct identification should be featured, misrepresentation in labeling or advertising should be avoided and, at the same time, the public should be truthfully informed that the merchandise manufactured under this off brand is produced by a responsible manufacturer, such as we have enrolled in the members of Sealy, Incorporated. The [fol. 244E] public can gain this correct impression by clearly mentioning, in bold print, in newspaper copy and on the labels, the fact that the merchandise is produced

by the Commercial Division of the Sealy Mattress Companies. This plan of identification, as agreed upon and selected, recommended by Messrs. Brody & Englehardt, is predicated upon the fact that this proposed handling by Sealy would be an exact duplication of similar handling by other established corporations who have national acceptance as, for instance, General Motors, Chrysler, American Telephone & Telegraph, and the U. S. Steel Corporation. In each instance their affiliated products and services are identified through the branding and publicizing of the term "division of." For clearer emphasis some of the most careful firms, from the above mentioned list, go a step further and limit their identification by employing the term "commercial" in connection with "division of." In this manner the truth will be established, and in the long run this is essential to obtain the final acceptance of the public, and the cooperation of public agencies, such as Better Business Bureau and National Trade Practice agreements.

Point 5—Control of Resale Prices. It is suggested by Messrs. Brody & Englehardt that the control of the resale prices, as set by the members of Sealy, Incorporated at the last national meeting that this control be established by the Executive Committee in line with the unanimous agreement of the members. The control referred to is that of a limitation in mark up on wholesale cost to a maximum figure of 200%. By controlling the resale within the limitations of 200% we will avoid so-called borax handling of our off brand. Naturally, we will miss the business of dealers who want to put three or four numbers on their products, but there will still be enough legitimate business obtained to insure Sealy, Incorporated that the consuming public will receive a quality product in the various generally accepted resale price levels.

[fol. 245E] Point 6—Labels. Labels should originate from headquarters, and any off brand name selected by the members for local imprinting should likewise be furnished to headquarters so that headquarters will have knowledge of the local imprinting practice in connection with the label handling.

Point 7—Royalties. The proposed schedule of royalties

suggested for consideration of the Executive Committee to cover handling in connection with the off brand is attached.

Point 8—A proposed label exhibit is hereto attached showing a suitable label for the off brand. Note carefully the clear and straight printing which recommends the label. In our opinion, the design of the off brand label exhibited should be improved upon. Likewise attached are other exhibits of what might be considered suitable label designs. The principal feature of the label exhibit is that same shows very clearly and effectively that the mattress name is Imperial, that Imperial is a Crestline product, and that the manufacturer of Crestline products is the Commercial Division of Sealy Mattress Company. We feel that plenty of notice is thus tendered to the trade and to the public that the branded product is not one of our custom-made and highly advertised Sealy mattresses.

Point 9—It is further suggested by Messrs. Brody & Englehardt that Crestline products should be, and exclusively if possible, ordinary button-tufted merchandise. It is further recommended that tuftless merchandise should not be featured in the off brand. By limiting the scope of Crestline to button-tufted merchandise, we should be in a position to compete with the practice of all of our competitors who are more or less completely identified with and limited to buttons and tufts. In their handling, they promote the price of the product rather than the sale of same, leaving to the dealers any possibility of promoting sales. Through Crestline, Sealy dealers would be in a more flexible position to promote profit or price and thus keep the volume active and average gross handling profit [fols. 246E-248E] in line with 125% to 150%. Sealy, Incorporated should concentrate its activity, so far as general advertising and merchandising are concerned, toward the promotion of the value of Sealy Tuftless exclusive products instead of ordinary tufted goods. The sale of Tuftless goods could thus be promoted instead of price promotion on Sealy.

Point Ten—It is further recommended that Sealy, Incorporated control the advertising practice surrounding the off brand at least so far as this advertising affects the

advertising practice in our Sealy line. This control would be complete and accurate provided Crestline ads mentioned somewhere, in connection with the ad, that the dealer also carried the complete line of Sealy Tuftless products. Thus the consumer would be notified through the labels and the advertising practice that there is some difference in products manufactured by members of Sealy under the two brands. Quality of workmanship and materials should be established in the minds of the public as being an attribute of both Sealy and Crestline merchandise, Tuftless, Nukraft, and custom made features will be associated with Sealy, whereas commercial and average characteristics will be associated with Crestline.

Brody & Englehardt.

[fol. 249E] (35) August 20th—The President opened the meeting. Mr. H. E. Wolf, Mr. J. R. Haas, Mr. Earl Bergmann, Mr. John M. Brody, Jr. and Mr. Lester Wolf were present.

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(37) The acceptability of the Dixie Mattress Company as a licensee was discussed, and Mr. Haas made a motion [fols. 250E-253E] that a contract be issued to the Dixie Mattress Company provided (a) The usual stock payment was made; (b) The prescribed minimum royalty was placed in effect; (c) The territory was restricted to Richmond and immediate vicinity. Mr. Bergmann seconded the motion. Voted. Approved.

(38) Mr. Bergmann made a motion that definite sales quotas be set up for the various Sealy territories, with the understanding that any plant failing to live up to its quota should be charged with that quota or forced to release the territory. Mr. Haas seconded the motion. Voted. Approved.

(39) Mr. Haas made a motion that these quotas be evolved for each territory on the basis of proper trading areas, also on the basis of buying power per family or per capita, whichever proved most acceptable to Sealy, Incor-

porated, and that Sealy distribution should be pro-rated in equitable amounts among those territories. Mr. Bergmann seconded the motion. Voted. Approved.

(40) Mr. Friedberg's complaint about the Minneapolis plant's failure to properly work the territory which Kansas City relinquished was read to the Committee, and it was decided that Mr. Wolf's letter should be supplemented by another from the Executive Committee expressing the Committee's appreciation of Mr. Friedberg's kind interest but stating that if Mr. Friedberg resumes operations in that territory it will be regarded as a violation of his contract.

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[fol. 254E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 36

Minutes of the Board of Directors Meeting—Jefferson Hotel, St. Louis, Missouri, November 12th, 1937.

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[fols. 255E-259E] (6) Mr. Bergmann took the floor and stated that it is absolutely essential for all Sealy plants to make identically the same merchandise and prove to the dealers that they are offering a thoroughly uniform product or the group will never have any national significance.

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[fols. 260E-261E] (23) Mr. Edgar Haas' letter, regarding transfer privileges on his Dallas territory was read to the Board of Directors. The matter was carefully discussed and Mr. Lester Wolf was instructed to frame a night letter in line with the expressed wishes of the Board. Mr. Bergmann moved that this night letter reading "Sealy, Incorporated will consent to your transferring that portion of the State of Texas you now have to Edwards and Dreeben on condition that you simultaneously transfer back to Sealy, Incorporated the Oklahoma territory with the further proviso that your successors will maintain a Sealy factory in Dallas and will not sell or manufacture any nationally advertised or licensed bedding other than Sealy" be sent to Mr. Edgar Haas with the full endorsement of the Sealy, Incorporated Board of Directors. Mr. Stein seconded the motion. Voted. Approved.

(24) Mr. Ostrow questioned Mr. Stein as to whether it was agreeable for him to work the Arizona territory, but Mr. Stein refused to commit himself.

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[fol. 262E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 37

Official Rulings Executive Committee Year 1937

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(10) August, 1937 Milwaukee given permission to handle Chicago territory temporarily with understanding all claims to this territory would be relinquished upon establishment of permanent arrangement for servicing Chicago.

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[fol. 263E] (15) August, 1937 Crestline Brand to be handled with following suggestions and restrictions (a) Neither Durolife unit, Nukraft, nor special standard Sealy features to be employed in Crestline; (b) No wholesale price restriction at present, but such restriction can be placed in effect at a later date by action of Executive Committee; (c) Cost Committee to set up basic specifications for various Crestline brackets; (d) Plant signature to be private brand name or other name but not Sealy Mattress Company; (e) Special contract to be signed by plants using Crestline; (f) Label handling to be in line with recommendations made at July Meeting; (g) A slug, approved by the Executive Committee to be used in connection with Crestline advertising, the use of this slug being compulsory; (h) Sealy to be shown in conventional type whenever used with Crestline; (i) Crestline to be confined to tufted mattresses for the present; (j) Crestline Brand to be sold only in the confines of the present Sealy territories.

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[fol. 264E] (20) August, 1937 Contract to be issued to Dixie Mattress Company provided (a) stock payment is made; (b) Minimum royalty is placed in effect; (c) The territory is restricted to Richmond and vicinity.

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[fols. 265E-266E] (33) August, 1937 Messrs. Brody & Englehardt to set up standard price list form for all Sealy plants to accompany release of Sealy catalogue.

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[fols. 267E-268E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 38

Sealy Annual Meeting—Palmer House, Chicago, Illinois—Board of Directors—December 6th, 1937.

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[fols. 269E-272E] (14) Mr. Friedberg complained about the name "Sleep Joy" being restricted to the $39.50 resale bracket stating that they had started building up a nice business on the "Sleep Joy" at $29.50. Mr. Friedberg was informed that if the "Sleep Joy" labels were useless to him on account of the $39.50 price restriction, they could be returned to Headquarters. Mr. J. R. Haas informed Mr. Friedberg that rather than have him run the Sleep Joy at $29.50, the Memphis plant would reimburse Kansas City for the cost of the labels involved, as a matter of fact, any burden or expense connected with Kansas City's use of the Sleep Joy name.

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[fols. 273E-275E] (27) Mr. Mankey requested permission to sell a Sealy mattress at $15.00 wholesale, to carry $39.50 resale. Mr. Mankey was instructed to offer this mattress at $17.50 less than 5%. Mr. Mankey made a motion that, in cases where definite competition makes it impossible to maintain the 125% margin on Sealy merchandise, that leeway should be granted so long as the retail price is maintained. Mr. Rogers seconded the motion.

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[fols. 276E-279E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 39

Sealy Annual Meeting, Palmer House, Chicago, Illinois
Board of Directors—December 7th, 1937.

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[fol. 280E] (23) Mr. Cady moved that the Cleveland plant be given permission to operate in Michigan in line with temporary contract executed between Sealy, Incorporated and the Cleveland plant. Mr. Ostrow seconded the motion. Voted. Approved.

[fols. 281E-282E] (24) The California contract situation was carefully discussed and Mr. Lester Wolf stated that in order to put the California contract on a proper basis, a separate contract should be in effect between Sealy, Incorporated and the Sealy Mattress Company of Northern California. The territory involved is to be taken out of the present California territory. The Board deemed it advisable for separate contracts to be issued with the understanding that the minimums are to be split in the contracts, but are to be reported jointly under the present arrangement. In the case of any transfer of territory, the minimums are to be reported separately in line with the standard minimums handling. Mr. Cady made a motion that the Executive Committee be empowered to work out this California contract situation in connection with Mr. Lester Wolf. Mr. Stein seconded the motion. Voted. Approved.

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[fol. 283E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 40

Minutes of Executive Committee Meeting, Pittsburgh, Penna.—April 26th, 1938.

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4. Mr. Wolf opened a discussion covering Sealy territorial set-ups, and outlined the territorial sacrifices made by various Sealy plants for the benefit of the Cor-
[fol. 284E] poration. Mr. Haas stated that his experience in North and South Carolina has not been at all satisfactory, and advised the Committee that North and South Carolina, also Georgia with the exception of the extreme southern part, were at the Corporation's disposal. Mr. Haas is to furnish a record of the Georgia boundary upon return to Memphis. Mr. Haas instructed Mr. Lester Wolf to omit these territories from the Memphis contract, but requested that the Corporation issue a special agreement permitting him to work the said territories until such time as licensees have been appointed therein. Mr. Bergmann moved that the Memphis contract be issued on this basis. Mr. Wolf seconded the motion. Voted. Approved.

5. Mr. Wolf questioned Messrs. Haas and Bergmann as to the handling of territories which become open through termination of contracts, et cetera. Mr. Haas moved that all territory, once ceded to the Corporation, is to be considered Corporation property, and that any such territory which becomes open due to a member leaving the group, or for some equally good reason, is to revert to the Corporation. Mr. Bergmann seconded the motion. Voted. Approved.

6. Mr. Haas further moved that the original owners of such territories be granted special permission by the Corporation to work such territories until such time as new licensees are appointed therein, in order to keep the Sealy name alive, with the understanding that these original owners will be consulted when a new licensee is brought in and the territory re-aligned on the basis of the

[fols. 285E-289E] geographical position of the new licensee. Mr. Wolf seconded the motion. Voted. Approved.

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[fols. 290E-294E] 19. Mr. Haas moved that the transfer of territory between Mr. Edgar Haas and Mr. Joe Rogers be formally approved by the Committee. Voted. Approved.

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[fol. 295E] 43-c Mr. Brody was called in, and Mr. Bergmann asked him why he was in Pittsburgh instead of Chicago. Mr. Brody stated he had remained in Pittsburgh for two reasons, one, that St. Paul did not have any Nukraft as yet, therefore could not use him, secondly, that he wanted to be completely posted on the Chicago situation. Mr. Haas informed Mr. Brody that he had all the necessary posting on the Chicago situation.

Mr. Haas informed Mr. Brody that when he left the St. Paul agreement with Mr. Brody it had not contained any mention of the Milwaukee territory, and wanted to [fol. 296E] know why Mr. Brody had incorporated this territory in the final agreement. Mr. Brody stated the agreement had been approved at Pittsburgh. Mr. Culp told Mr. Brody it had been approved because of Mr. Brody's statement that the territorial handling had the full endorsement of Mr. Bergmann. Mr. Bergmann stated he was not acquainted with the territorial handling. Mr. Brody said it was his understanding that it had been agreeable with Mr. Bergmann.

Mr. Haas informed Brody that his high pressure selling methods were no doubt responsible for some of the trouble experienced by Sealy with its new plants, and added that Mr. Brody had probably made the St. Paul plant exaggerated promises, in bringing them into the deal, and that he would be held personally responsible if anything serious developed at that point. Mr. Haas further stated that Mr. Brody does not recognize contracts in his selling, and that Friedberg had informed him that he had a letter from him asking for the surrender of Omaha, in place of Oklahoma, though Mr. Brody was well informed that Oklahoma was not open for any barter due to being a part of Mr.

Edgar Haas' territory. Mr. Brody denied writing such a letter, but admitted that he had discussed this handling with Mr. Friedberg by telephone. Mr. Haas then inquired what proposition Mr. Brody had made to Mr. Brandwein.

44-c Mr. Brody stated that Brandwein is willing to take the following territories on a graduated scale. Territory 1—City of Chicago—at $150 minimum. Territory 2—Illinois territory—Bloomington—at $150 mini- [fols. 297E-300E] mum. Mr. Haas wanted to know how Mr. Brody could promise the Bloomington territory. Mr. Brody said he hadn't promised it, but had stated something might be worked out in Illinois, without getting down to actual boundary lines. Territory 3—Indiana—$150 minimum. Territory 4—Part of Michigan—$150 minimum. Total Minimums, $600. Territories to be assumed within a reasonable period. Mr. Haas asked Mr. Brody to define reasonable period. Mr. Brody stated six months to a year. The territory in which Brandwein is really interested, according to Mr. Brody, is Indiana, western Michigan, Illinois, City of Chicago, half of Wisconsin, also, a part of Iowa. Mr. Brody was advised that Mr. Haas would discuss this situation further in Chicago.

[fol. 301E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 42

Sealy Executive Committee Meeting, Sealy, Incorporated, Pittsburgh, Pa.—January 29th and 30th, 1939.

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1. The President announced that the first subject for discussion was the matter of the Pittsburgh and Memphis contracts. Mr. Bergmann moved that the territories originally belonging to the Pittsburgh and the Memphis plants be granted in accordance with their desires, based upon the records, with the understanding that Sealy, Incorporated retains the right to license the North and South Carolina territories to the Mebane Royall Company provided this license arrangement can be consumated within a six month period. If no such arrangement is effected within this six month period, the North and South Carolina territories are then to become part of the permanent Memphis contract. Mr. Stein seconded the motion. Voted. Approved.

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[fol. 302E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 43

The Sealy Executive Committee Meeting, William Penn Hotel, Pittsburgh, Pa.—Wednesday, May 17th, 1939.

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[fol. 303E] 6. The President instructed the Corresponding Secretary to read the Barcalo Manufacturing Company's letter of April 21st on the subject of the Michigan territory. Mr. Stein made a motion that Sealy temporarily add the Michigan territory to the Buffalo contract with the understanding that some definite arrangement will be made regarding the Michigan territory effective January 1st, 1940. Mr. Haas seconded the motion. Voted. Approved.

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[fol. 304E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 45

Minutes of the Meeting of the Executive Committee of Sealy, Incorporated—Saturday and Sunday, November 4th and 5th, 1939, Congress Hotel, Chicago, Illinois.

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[fol. 305E] 7. Mr. J. R. Haas moved that coincident with the formal opening of the new Chicago office, Mr. Brody be empowered by the Board of Directors of Sealy, Incorporated to engage the services of two office assistants at gross salaries for the two people not to exceed $250.00 per month. He further moved that the work of all the personnel in the Chicago office be subject to the supervision of the President. Mr. Wolf stated that upon the removal of the general office to Chicago, that then the personnel of the Pittsburgh office would be reduced to one stenographer at compensation not to exceed $125.00. Mr. Stein seconded the motion. Unanimous consent.

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[fol. 306E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 46

PRESIDENT'S REPORT

To all Sealy Group Members:

In recent checks with the Sealy group members, the writer has noted that every Sealy member is keenly interested in knowing what Sealy has accomplished from year to year, also, what Sealy has in mind in the way of future accomplishments. In view of this extremely cooperative attitude on the part of all Sealy group members it is my pleasure to submit herewith a summary of some of the outstanding accomplishments in Sealy during the writer's Presidency, with due credit given to those members who have contributed in great measure to this progress.

Sealy's first aim has been standardization. The measures taken, in my effort to assure complete standardization of Sealy products and Sealy operation, have been many. Some of them have proven extremely effective, others have not, but at least they have laid an excellent groundwork for the future and have taught us what is to be avoided if we are to prevent a recurrence of errors already made.

Standardization

1. The setting up of a Sealy contract which has proven acceptable to every organization desiring to become a member of Sealy, Incorporated.
2. The elimination of the featuring of private brand products under the Sealy name.
3. The development of a highly satisfactory system of royalty returns, with proper allowance made for the problems of new plants entering into Sealy.
4. The trademarking of all important Sealy names for the protection of Sealy members.
5. The setting up of complete mattress, boxspring, bedspring, and studio specifications to act as a guide for all Sealy plants.
6. The development of the Sealy Durolife Innerspring

Unit; and the setting up of standard specifications for various grades of these units.

7. The recalling of all old Sealy labels to assure that all Sealy goods will carry standard labels only, which have been fully approved by the Sealy, Incorporated Board of Directors.

8. The establishment of a standard line of Sealy labels, for standard and promotional items so that Sealy labels are today a recognized Sealy feature, and serve an excellent purpose so far as custom identification of Sealy merchandise is concerned.

9. The establishment of standard Sealy label sources and proper control of label purchases.

10. The production of a Sealy catalogue showing all of the items comprising the standard Sealy line.

[fol. 307E] 11. A name and price registration system to prevent the use of conflicting names and prices in adjoining Sealy territories.

12. The development of miscellaneous forms to simplify reports to headquarters, namely, standard royalty reports, standard specification forms, standard advertising follow-up forms, etc.

13. The adoption of standard tickings for the most important Sealy numbers.

14. The adoption of standard borders to the standard tickings above referred to.

15. The establishment of a definite Sealy dealer cooperative advertising handling.

16. The establishment of a definite syndicate discount policy.

17. The setting up of restrictions covering the markups and comparatives on general promotions, the special February and August promotions, Crestline brand, etc.

18. The furnishing of definite cost figures together with the release of specifications, covering promotional handlings, to simplify the task of the Sealy plants in getting geared up for these promotions.

19. The furnishing of specific instructions for the production of any items, involving special manufacturing processes, as in the case of the Sealy Posture Pillow.

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[fol. 308E] Advertising

E. Sealy Catalogue—As previously mentioned in connection with the standardization program, through a great deal of work on the part of your Sealy Board of Directors in conjunction with all the Sealy plants, Sealy was finally successful in producing a catalogue showing items of Sealy merchandise available over the entire country.

2. Sealy Mat Portfolio—Again this extremely important advertising piece, which contains a number of the most outstanding promotions developed by individual Sealy plant members, was made available to Sealy through the splendid cooperation of all Sealy group members, who generously contributed whatever advertising ideas had been most successful in their respective territories for the purpose of setting up this book.

3. Sealy Institutional Newspaper Campaign—This was developed by the Memphis plant, which spent a great deal of time in assuring that these newspaper advertisements would be out of the ordinary, and the campaign was offered to Sealy at a nominal figure in view of the time which was spent in its development. In addition to the newspaper mats, this campaign also covered some extremely effective Sealy screen broadcasts, window displays, direct mail, etc.

4. Sealy Sleeps Shops—The program of Sleep Shops originated in Memphis, and the Memphis organization developed the extremely attractive flitter signs, mattress racks, etc. which have been used so successfully in other Sealy territories.

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[fol. 309E] Expansion

1. New Members—It is a great pleasure to the writer that since his Presidency Seals has had the privilege of welcoming such members as the Barcalo Manufacturing Company, the Marquardt Company, the Fred G. Hodges Bedding Company, the Ingraham Manufacturing Company, and Osiason, Incorporated. Many valuable ideas have already been gained from this "new blood".

2. Firestone—You are already acquainted with the outcome of our negotiations with the Firestone Tire and

Rubber Company. While Sealy, Incorporated was not successful in securing Airtex distribution for Sealy exclusively, as originally promised, nevertheless, the Sealy group members were given the privilege of availing themselves of the Firestone franchise for their respective territories and benefitting by the generous advertising allowances which Firestone is making. Also, all members were completely reimbursed for their expense in this connection.

3. Territorial Concessions—Certain territorial concessions have been necessary, to make possible the admittance of new Sealy group members, and the writer takes this opportunity to confirm his appreciation of the extremely cooperative spirit which has been evidenced in instances of this nature.

4. Research Engineering—Through a courtesy arrangement with the Fort Pitt Bedding Company Sealy, Incorporated has been availing itself of the services of Mr. Walter DeFries as Research Engineer on such problems as have called for this type of handling.

[fol. 310E] Future Plans

1. You are all aware of the fact that our Advertising programs have been quite limited during the past few years because of the lack of proper funds. Under a new arrangement, under which the older Sealy group members are now operating, it is hoped that sufficient funds will be available to enable Sealy to support a more intensive advertising program during the year 1940.

2. Administrative Expense—A careful analysis has been made of headquarters' operation, and certain economies are being instituted which we feel certain will merit your complete approval.

3. Innerspring Unit—The writer is following the development of a new unit, on which Sealy has been promised exclusive when it is completed, and while it is still in the early stages of development, we want you to know that Sealy is constantly on the lookout for new features.

4. Hotel and Hospital Field—The Hospital field especially, during the past couple of years, has been a fairly profitable one and for this reason Sealy plans to start a strong campaign for this institutional business. The Pittsburgh plant has been working extremely hard, along

those lines, and the success which it has experienced in its individual territory should act as an incentive to other group members.

5. Latex Sponge Rubber Pads—We have been working very closely with the B. F. Goodrich Company, in the development of these pads, as it would, of course, be a great asset for Sealy if Sealy could offer an all-rubber mattress to which the Sealy group members would have exclusive rights. In other words, we hope for a similar arrangement on "Aircell" as is now in existence on Nukraft.

6. Simplification of Line—After a careful analysis of the present Sealy line we believe that simplification is very essential, and are hopeful that this can be accomplished in the near future.

7. New Members—With other problems out of the way, Sealy plans an intensive membership drive in 1940 with the purpose of filling in all gaps in the present Sealy national picture.

8. Government Jobs—If the writer is successful, in a certain contact which he intends to establish very shortly, the Sealy group members will be kept closely informed about government activities in their respective territories which might be of interest to them so far as the securing of government bedding contracts is concerned.

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[fol. 311E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 47

Minutes of the Meeting of the Board of Directors of Sealy, Incorporated—Wednesday, December 13th, 1939. Congress Hotel, Chicago, Illinois.

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2. The President opened the meeting by instructing the Assistant Secretary to see that a letter is issued to all Sealy plant members requesting that they send in a 5" x 8" filing card for each customer on their mailing list, this card to carry the name of the customer, his address, the kind of merchandise he buys, and the price. Both Sealy and Crestline are to be covered by the card. The President explained that the idea was to have these cards on file at the American Furniture Mart so that a customer, from any Sealy territory could be taken care of at this point without any possibility of his being quoted conflicting prices, etc.

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[fols. 312E-322E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 48

Minutes of the Meeting of the Executive Committee of Sealy, Incorporated, Friday—April 26th, 1940, Congress Hotel—Room 1808—Chicago, Illinois.

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[fol. 323E] 11. Mr. N. M. Graves made a motion, seconded by Mr. Morris Stein, which motion carried unanimously, that the Executive Committee authorize Mr. J. R. Haas to temporarily service certain territories in Indiana, from the Indianapolis warehouse of Mr. Haas, until such a time as a suitable factory connection can be made for Sealy, Inc., in the Indiana territory not now owned by Sealy of Memphis.

12. Mr. N. M. Graves made a motion, seconded by Mr. Morris Stein, which motion carried unanimously, that the Committee authorize Mr. R. G. Culp of the Fort Pitt Bedding Company to temporarily service the Philadelphia territory on Sealy goods out of a Philadelphia warehouse until such time as a more suitable factory connection can [fol. 324E] be made for Sealy in the Philadelphia area.

13. Mr. J. R. Haas made a motion, seconded by Mr. Morris Stein, which motion carried unanimously, that in the case of all additional territory temporarily licensed by written agreement to existing Sealy manufacturers by Sealy, Incorporated, for warehouse activities on Sealy in said open territories, that said temporary releases by Sealy to manufacturers are made upon the premise that manufacturers will both fully service and fully advertise the name of Sealy in said territories or otherwise withdraw from the area. Any such license is subject to revoke by Executive Committee action on ten (10) day notice.

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15. The Executive Committee gave their consent to Sealy Mattress Company of Memphis to sell Sealy mattresses to retail stores of the Montgomery-Ward Company within its own area provided such sale as made by Montgomery-Ward Company were handled through normal retail outlets at standard Sealy retail prices.

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[fol. 325E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 49

Minutes of the Meeting of the Executive Committee of Sealy, Incorporated, Thursday—June 27th, 1940, Congress Hotel—Room 1110—Chicago, Illinois.

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3. Mr. J. R. Haas notified the Executive Committee that the changes in the territory of the Buffalo and Fall River plants, as outlined in the Minutes of the April Meeting, that these changes have been made and to the satisfaction of the parties concerned and are now in effect.

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5. Mr. Haas notified the Committee that he executed on behalf of Sealy, Incorporated, a termination of the contract between Sealy, Incorporated, and the Sealy Mattress Company of Tigard, Oregon, in line with the request of Mr. M. P. Cady of Tigard. It was further explained that at the time of termination Mr. Cady settled in full all obligations of the Tigard factory to Sealy, Incorporated, and up-to-date. It was explained in a letter from Mr. Cady to members of Sealy that his retirement from active work in Sealy and the termination of Manufacturers Agreement with Sealy were required so as to make possible a new and larger Sealy opportunity in the Pacific Northwest territory. Mr. Cady conditioned his termination upon acceptance by Sealy, as a member, of Mr. Arthur H. Raasch owning and operating the Pettit Feather & Bedding Company of Portland, Ore., which Company would absorb the Sealy Mattress Company of Tigard. The Committee approved the termination handling of the President in connection with the Tigard franchise.

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[fol. 326E] 8. Mr. Haas read to the Committee correspondence between himself and the Sealy Mattress Company of Houston, Texas on the one hand and between himself and the Sealy Mattress Company of Dallas on the other hand, with regard to shipping of Sealy merchandise manufactured in the Dallas territory in the Dallas plant and sold to a dealer in the Dallas territory then diverted by that dealer to a sales organization in Houston, Texas. Mr. Haas asked the Committee for delegation of authority from the Committee to himself to handle this Texas problem for the protection of the Houston factory and Sealy, Incorporated. The Committee approved of Mr. Haas' handling to-date in connection with this problem and recommended he pursue this matter to a correct conclusion.

[fol. 327E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 50

Minutes of the Semi-Annual Meeting of Stockholders of Sealy, Incorporated, Friday—June 28th, 1940, Congress Hotel—Room 1110—Chicago, Ill.

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2. Mr. Haas brought up for discussion again the subject matter of the correspondence, which correspondence was between himself and the Sealy plants in Houston and Dallas, Texas, concerning Sealy merchandise produced at Dallas and sold in the Dallas territory and then diverted in shipment for resale in the Houston territory. Mr. Ira Pink acknowledged the incident with full explanation to the effect that said handling was entirely without knowledge and consent of the Sealy Manager at the Dallas factory. He further assured the members of Sealy that such steps would be taken by the Dallas factory to prevent any recurrence of such an incident in the future. It was explained to those present that Mr. Haas would proceed with the handling of this Texas incident toward the end that the interest of the Houston factory and Sealy, Incorporated would be fully protected, and assured Mr. Pink he would continue with his negotiations with him toward this desired end.

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[fol. 328E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 52

Minutes of the Meeting of the Executive Committee of Sealy, Incorporated, held at the Palmer House, Chicago, Illinois, February 26th, 1943.

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[fol. 329E] 9. Mr. Brody talked on the possibility of expansion by the addition of new plants in the Carolinas, another one in New England, possibly one in upper New York State, one in St. Paul and one in Detroit. He also outlined the possibilities of following the plan in operation at Chicago and Milwaukee which is fully covered in detail in Mr. Brody's Bulletin C-206 dated February 22nd. This plan is a co-ordinated program of planned production in the plant, on the higher brackets of Sealy items, together with a concentrated selling effort on these items that will automatically carry along the entire line of Sealy felts.

10. The subject of an additional merchandising man to assist Mr. Brody in his work was brought up but it was the consensus that due to the uncertainty on ticking and other supplies that it was best not to engage any one until perhaps July. The matter was left in the hands of the president who already had the authority for this purpose and that if conditions change Sealy would endeavor to find a suitable man.

11. Mr. Haas brought up the question of five counties in Iowa that are now part of the Kansas City territory and which Des Moines requests to have included in their territory. The matter was left in the hands of the president with the idea that if Kansas City desired to relinquish these counties they would be turned over to Des Moines.

12. Mr. Haas stated that Sealy was in need of additional revenue and that it was reasonable to expect and ask that the old plants increase their royalty payments by 25%. There was considerable discussion and finally the following resolution was offered by Mr. Stein: It is agreed that the following ten factories; Memphis—Oakland—Los Angeles—Denver—Houston—Pittsburgh — Cleveland — Dal-

las—Portland and Kansas City, holding fixed fee royalty contracts with Sealy, Inc., will increase their collective annual royalties to Sealy from an annual basis of $45,000.-00 to a minimum annual basis of $56,000.00, effective July 1, 1943.

It is further agreed that the market analysis be measured in the form of buying power units for the entire country. The total number of buying power units in the area licensed to the above ten factories will represent 100% of the total annual budget of $56,000.00. Each plant will pay its proportion to 100% of the total annual budget for its number of buying units in the individual territory. For example, if there would be 1000 buying units in the combined territory of the ten plants, each unit would cost $56.00 and each factory would pay for the number of buying units in their franchised area at $56.00 per unit.

It is further agreed that the annual factory royalty will be increased or decreased according to the change in the number of buying units in its respective territory. Each plant will therefore contribute for the buying power of the respective factory at the original cost per unit, but no minimum of any plant shall be less than $300.00 per month. Mr. Culp seconded the motion. Passed.

13. Mr. Ostrow moved that the total refund of 40% on royalties paid in by Sealy licensees shall be extended from November 1st, 1942 to September 1st, 1943 and shall apply to the following media: Radio, Newspaper, Billboard space rental and car card space contracts and that as of Jan. 1st, 1943 the refund allowance for radio advertising shall be increased from 20% to 40%. Mr. Stein seconded the motion. Passed.

[fol. 330E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 53

Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held March 30th, 1945, Adjourned from March 29th, 1945.

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[fol. 331E] Certain changes were suggested, mainly on the question of clarification.

After a thorough discussion it was moved, seconded, and carried that the contracts might provide for the grant of a permanent license to Licensees when authorized by the Board of Directors after a study of the record of the respective Licensee, but permanent contracts should contain a provision that upon ninety days' notice from Sealy, Incorporated shall have the right to increase or decrease royalty payments, raise or lower minimums, and make such other changes in the contract as Sealy, Incorporated shall deem necessary or expedient except that the territory provided in the license shall not be changed, and that no permanent license can be granted except by a vote of three-fourths of the Board of Directors.

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[fol. 332E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 55

Minutes of the Meeting of the Stockholders of Sealy, Incorporated, held at the Stevens Hotel, Chicago, Illinois, November 16th, 1946.

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4. Mr. Haas reported on the progress of Sealy, Incorporated during the past year, and stated that the Corporation was in excellent condition and suggested that the Corporation stock be put on a 6% yearly basis.

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[fols. 333E-334E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 57

Minutes of the Executive Committee Meeting of Sealy, Incorporated, held May 22nd, 1947, at Memphis, Tennessee

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[fol. 335E] Mr. R. W. Marquardt, President of Posture Products, Incorporated, who was in attendance at the meeting on behalf of the stockholders of Sealy Mattress Company of Milwaukee, stated to the Executive Committee that the stockholders of Sealy Mattress Company of Milwaukee had agreed to selling the entire capital stock of the Sealy Mattress Company of Milwaukee to Sealy Mattress Company of Illinois, and that one of the requirements to be fulfilled by the stockholders of the Sealy Mattress Company of Milwaukee was to obtain from Sealy Incorporated a consent to the sale so that the Sealy franchise in the Milwaukee area could be transferred and assigned to the Sealy Mattress Company of Illinois, which would assume and undertake to perform the obligations of the Licensee in the license contract from Sealy, Incorporated to Sealy Mattress Company of Milwaukee.

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[fols. 336E-337E] "After a thorough discussion it was moved, seconded, and unanimously carried, M. A. Kaplan not voting, as follows:

Whereas, the stockholders of Sealy Mattress Company of Milwaukee have requested Sealy Incorporated to consent to a transfer of the franchise in the Milwaukee area from Sealy Mattress Company of Milwaukee to Sealy Mattress Company of Illinois, as a part of the sale by the stockholders of Sealy Mattress Company of Milwaukee of the entire capital stock of the Sealy Mattress Company of Milwaukee:

Be It Resolved:

(1) Sealy Incorporated does hereby consent to a transfer of the license issued by Sealy Incorporated to

Sealy Mattress Company of Milwaukee, covering the territory described in said license agreement, to the Sealy Mattress Company of Illinois, which will assume and obligate itself to perform all of the covenants and agreements in said license with the following promisos:

(a) If and when determined by Sealy Incorporated, there may be deleted from the territory and set aside certain counties in the State of Michigan adjacent to the Detroit territory for the purpose of enlarging the territory to the licensee of Sealy Incorporated at Detroit.

(b) When and if determined by Sealy Incorporated, Sealy Mattress Company of Illinois agrees to provide facilities for distribution of Sealy products at Grand Rapids, Michigan.

(2) The President of Sealy Incorporated was directed to notify in writing Sealy Mattress Company of Milwaukee of the passage of this resolution, furnishing it a copy of the same, and also giving a copy of his letter and its enclosure to Sealy Mattress Company of Illinois."

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[fol. 338E] Mr. Haas made a report regarding his negotiations with the Kansas City and Fall River Licensees. He stated that neither of the present Licensees were doing a first class job, and had given each of them until June 1, 1947, to make a showing and if such showing was not satisfactory to him, he thought that new licensees should be appointed.

Upon motion made and seconded, Mr. J. R. Haas was authorized to handle to a conclusion the question of continuing the licenses or the appointment of new Licensees at Kansas City and Fall River.

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[fol. 339E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 58

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Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held at the Palmer House, Chicago, Illinois—July 4th, 1947.

A Continuation of the Meeting Held July 3rd, 1947

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6. Mr. Brody spoke on Sealy sales and prospects. He called attention to the fact that Sealy had a new Licensee at Kansas City. He spoke very highly of Mr. Kanter and his associates, and stated that he expected that Sealy would have a very strong situation in the Kansas City territory. Mr. Brody suggested that when the Texas situation was handled, the territory surrounding El Paso should be coupled with the territory in Arizona to make new adequate Sealy territory. He also recommended that this territory be covered as soon as possible. Mr. Brody stated that applications were on hand from Mr. Banks and also Mr. Ross Rosenberg, for the Minneapolis territory. He also advised that New York had been divided between the Buffalo territory and Schenectady. He recommended that the Carolina territory be covered as soon as possible. He stated that it would be possible to sign up Mr. Englehardt in the Reading territory provided Mr. Englehardt could secure the Gring interest. He advised that the Sealy Pittsburgh plant had withdrawn from some territory which Reading was covering. Mr. Brody advised that there was several possibilities in Philadelphia, and in his opinion the Silver people would make good Licensees and that they would have his recommendation. Mr. Haas interrupted and advised of some of his negotiations from

McMahon and said in his opinion that Mr. McMahon would best serve the interest of Sealy.

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[fol. 340E] 8. Mr. Ostrow moved that based on Mr. Brody's report that the State of Arizona and El Paso territory be covered by the Licensees as soon as possible. Mr. Stein seconded the motion. Passed.

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13. Mr. Haas presented a proposition for an Australian factory. Mr. Ostrow moved that if the people in Australia were interested and are willing to pay the transportation and hotel expenses, that we should send a man to organize the territory and assist in setting up a plant and close a Licensee for that territory. Mr. Fouts seconded the motion. Passed.

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[fol. 341E] The disposition of the Texas and Oklahoma territory was discussed. Mr. J. R. Haas stated that the U. S. Bedding Company would be willing to pay $15,000. for this territory at the rate of $1,000.00 per month and they in turn would expect payment for territory they had ceded to Cincinnati which would amount to somewhere between $7,000. and $8,000. On the Texas territory they would be willing to eliminate territories surrounding El Paso that could be included with a possible future plant to include Arizona. Mr. Stein raised the question of giving this territory to Memphis without giving consideration to Denver's request for some portion of the Texas territory. It was decided to have a Committee of three to review this territory and work out a satisfactory deal between Denver and Memphis. It was the contention of Mr. Stein, that Sealy should accept the offer of the U. S. Bedding Company for this territory and they should pay $15,000. Mr. Fouts stated that in his opinion, Sealy should not sell [fol. 342E] territories. There was considerable discussion. Mr. Fouts moved that Sealy's obligations to Mem-

phis for the territory ceded to Cincinnati be cancelled and the Texas and Oklahoma territory be licensed without charge. Mr. Marquardt seconded the motion, and it was passed.

9. Mr. Haas brought up the Kansas City situation that the City Mattress Company had purchased the Osiason interests. The contract for this territory is being prepared for signature with $400. per month minimum, or 3% of net sales. Contract is effective as of July 1, 1947.

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13. Mr. Haas advised that the Sealy stock secured from Ft. Pitt and Dallas totalled 170 shares at $105.00 per share would be offered to the Sealy members in writing.

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[fol. 343E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 59

Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held at the American Furniture Mart, Chicago, Illinois, Space #920—July 6th, 1947.

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3. Mr. Haas advised that the Osiason Bros. were willing to go ahead on the Fall River contract on the 3% basis as of January 1, 1947, and would subscribe for 45 shares of Posture Products stock.

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6. Mr. Haas reported that Cleveland and Memphis 3% contracts were deferred for the time being.

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9. Mr. Metcalfe asked if Memphis or Sealy, Inc. owned the North Carolina territory and Mr. Haas advised that it was part of the Sealy Mattress Company of Memphis territory. There was discussion on the advisability of dividing the North Carolina territory between East Point, Bluefield and Richmond, if this territory is available. The majority of those present were in favor of this arrangement.

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[fols. 344E-346E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 60

Minutes of the Meeting of the Board of Directors of Sealy, Incorporated held at the Stevens Hotel, Chicago, Illinois—November 20, 1947.

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[fols. 347E-348E] 17. The following resolution was offered by Mr. Louis G. Haas, and seconded by Mr. Kaplan:

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Now, Therefore, Be It Resolved:

(1) That Sealy, Incorporated issue to U. S. Bedding Company a license for that portion of Texas and the State of Oklahoma, formerly under license from Sealy, Incorporated to Sealy Mattress Company on the same terms as Sealy Incorporated has issued licenses to other Licensees, to wit: 3% of sales for the first $1,000,000.00; 2% of sales for the second $1,000,000.00; 1% of sales for the third $1,000,000.00; and 2% of all sales above $3,000,000.00, and that said license contract contain an agreement on the part of U. S. Bedding Company to establish a plant with adequate facilities in the licensed territory not later than June 30, 1950.

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[fols. 349E-350E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 61

Board of Directors Meeting Sealy, Incorporated—January 5, 1948.

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[fol. 351E] Approval Voluntary 3% Amendments:

Upon motion made and seconded, the Voluntary 3% amendments to the following Licensee contracts were read and approved and the President authorized to execute said amendments on behalf of the corporation:

U. S. Bedding Company
Ohio Mattress Company
Sealy of Los Angeles
Sealy of Northern California
Sealy of Denver, a partnership composed of Stein and Nierenberg.

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[fols. 352E-353E] Approval of Advertising Budget:

Upon motion made, seconded and unanimously carried the appropriation for magazine and periodical advertising for the year ending June 30, 1948 was increased to $170,000. Such increase is to be used in obtaining certain full page advertisements instead of half page advertisements.

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[fols. 354E-355E] North and South Carolina Territory Offer by Memphis:

Louis Haas: After giving careful thought to the matter, we have decided to offer the North and South Carolina territory to the Board to be disposed of as they see fit, subject to our approval. We are unable to service this territory properly and therefore thought it best to give it up provided it can be properly serviced.

Chairman: In behalf of the Board we will accept your offer on the basis that the ultimate disposition of the territory will be subject to your approval.

[fols. 356E-358E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 62

Minutes of Executive Committee Meeting, Sealy, Incorporated, held February 20, 21, 1948 at Sealy Headquarters, 666 Lake Shore Drive, Chicago, Illinois.

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[fol. 359E] 19. A discussion ensued with reference to the Baltimore and Washington, D.C. territory. It was suggested to have Sidney Sutherland, Sealy Mattress Company of Richmond, continue to temporarily serve Washington, D.C. so he could ascertain for himself whether he was in a position to properly serve this territory as well as his own territory which he is now serving. Mr. Sutherland was to be informed that we would not seek a Washington Licensee or a Licensee to cover that area during the next year or two while he is surveying and servicing this territory. The Baltimore territory was left open for further inquiry in that section in order to exploit possibilities of securing a Licensee in that City to cover Maryland and Delaware.

20. A discussion of the North Carolina and South Carolina territory which the U.S. Bedding Company of Memphis had agreed to release to Sealy, Incorporated upon acquisition of a Licensee for that territory or upon a division of that territory to the Licensees contiguous to that territory was held. It was felt that the Officers of Sealy, Incorporated were not in a position to determine the advisability of permanently dividing this territory at this time since no yardstick for measuring the adequacy of performance was available to the Officers. It was therefore recommended that the Sealy Mattress Company of Atlanta, Georgia (Zimmerman Mfg. Co.), Sealy Mattress Company of Bluefield, Virginia (Graham Mattress Company), and Sealy Mattress Company of Richmond, Virginia (Dixie Mattress Company), temporarily servicing the North Carolina and South Carolina territory in the areas outlined to them by Sealy, Incorporated, be maintained on a temporary basis.

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[fols. 360E-363E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 63

Minutes of Executive Committee Meetings held in Chicago at the Space, 920 American Furniture Mart, on Friday and Saturday, September 17th and 18th, 1948.

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[fols. 364E-366E] 21. Request of Bluefield, Virginia. The request of Sealy Mattress Company of Bluefield, Virginia to add the territory now assigned temporarily to them from the former High Point territory relinquished to Sealy, Incorporated by Sealy of Memphis was discussed. It was decided that in view of the fact that the temporarily assigned territory to the Licensee at Bluefield was an integral part of a complete territory and in view of the fact that the Licensees at Richmond, Virginia and East Point, Georgia could not be given the same consideration towards making their portion of the High Point territory permanent it was decided not to change the nature of the territory assigned to the Licensee at Bluefield from its present temporary status.

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[fol. 367E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 64

[fol. 368E] Reconvened Meeting of the Executive Committee of Sealy, Incorporated held at American Furniture Mart, Space 920, Chicago, Ill., September 30, 1949.

Change in Territory Bluefield

5. Mr. Lawrence offered the following changes in the territory of the Bluefield, Virginia plant and the Richmond, Virginia plant for the consideration of the committee. The Bluefield plant released the following counties: Mitchell, Yancy, MacDowell, Polk, Henderson, Buncombe, Madison, Heywood, Transylvania, Jackson, Swayne, Macon, Clay, Graham and Cherokee. These counties were [fols. 369E-370E] combined in the territory franchised to the new Charlotte licensee. The Bluefield plant acquired the following counties in North Carolina: Iredell, Davie, Forsythe, Davidson, Rockingham, Gilford, Randolph, Caswell, Alemance, Chatham, Person, Orange and Durham.

Richmond

6. The Richmond, Virginia plant acquired the following counties in the State of North Carolina: Johnston, Wilson, Wayne, Greene, Lenore, Craven, Duplin, Jones, Onslow and Cartaret. Upon motion by Louis Haas and seconded by Mr. Ockrant, the transfer of the territory as outlined above was authorized. Mr. Bergmann suggested that the plants be officially notified of the territory added to their permanent contract and that the plants be given notice to withdraw from any territory they may be serving on a temporary basis.

[fols. 371E-372E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 65

Meeting of the Board of Directors of Sealy, Incorporated held at the American Furniture Mart, Room 920, Chicago, Illinois, February 23, 1950.

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California Territory

4. Mr. Herbert J. Haas called to the attention of the members a discrepancy in the contracts issued by Sealy, Incorporated whereby the territory listed in the contract to the Oakland plant was also listed in the contract held by the Los Angeles plant. Mr. Ostrow explained that the contract he had with Sealy, Incorporated called for the entire State of California and, as a matter of convenience, he had, some years ago, asked Sealy, Incorporated to issue a contract for the area covered by Sealy of Northern California. Mr. Ostrow expressed his willingness to cooperate in correcting the records regarding the territories listed and the matter was referred to Mr. Herbert J. Haas for peparation of the necessary papers.

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[fols. 373E-374E] Milwaukee Contract

16. Mr. Kaplan asked the Board to review the action of a previous Board in granting a renewal of his Milwaukee contract for a five year period. Mr. Kaplan felt that inasmuch as the Milwaukee license agreement had been active for eight years, this contract should be set up on a perpetual basis. The Board found themselves in disagreement with such a contention and reaffirmed their intention of having perpetual contracts authorized only upon the completion of an eight year association with the existing management. The contract for the Milwaukee area was not authorized beyond the five year period.

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[fol. 375E] Denver & L.A. Mixing Over Nevada Territory.

23. Mr. Ben Antonoff of the Denver plant was invited in to the meeting.

Mr. Bergmann informed the Board that there was a mistake made in the contract with the Colorado Mattress Company and that the state of Nevada was listed as a territory assigned to them, although the Nevada territory has been in the Los Angeles contract since 1936. An examination of the old contract of the Colorado Mattress Company, which was terminated in 1948, indicated that the Nevada territory was not listed and Mr. Bergmann expressed the intent of the corporation to franchise to the new owners of the Colorado Mattress Company the same territory that was held by the old company. After some [fol. 376E] discussion, Mr. Antonoff said that he would check the records of the Colorado Bedding Company further and advise.

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[fol. 377E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 66

Minutes of the Board of Directors of Sealy, Incorporated Meeting held in Space 920, American Furniture Mart, Chicago, Illinois, June 20, 1950.

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East Point Franchise Termination

8. Mr. Bergmann brought up the matter of the Zimmerman Manufacturing Company with reference to the contractual relationship between that company and Sealy, Incorporated. Sales figures and performance of the East Point plant for the past year were made known to the Board and Mr. Bergmann stated that although Mr. Zimmerman was invited to the meeting, he did not appear. After some discussion, Mr. Fouts made the motion that the agreement with the Zimmerman Manufacturing Company, which will expire July 1, 1950, not be renewed and that the relationship between that company and Sealy, Incorporated be terminated as of that date. This motion was seconded by Mr. Kanter and the vote recorded as ten in favor and none opposed to the motion.

Cincinnati Franchise Termination

9. Mr. Bergmann made a report on the Charles A. Maish Company of Cincinnati. He stated that the Maish Company had decided not to sign the agreement tendered to them at the direction of the last meeting of the Board and that the working agreement with the Charles A. Maish [fol. 378E] Company would terminate on June 15th. Mr. Kaplan made a motion that the officers of Sealy, Incorporated be authorized to handle the open territory in regard to service as they deem fit and that this territory be serviced by the neighboring plants of Cleveland, Chicago, Louisville and Pittsburgh on a temporary basis until new licensees are located for the area. This motion was seconded by Mr. Louis Haas and passed.

1 Yr. Extension Passaic Franchise

10. Mr. Bergmann reported to the meeting that the Made-Wel Bedding Company of Passaic, New Jersey had been tendered a one year license arrangement but that the management of the Passaic plant felt that he was entitled to a longer agreement in view of the fact that he had to make commitments on new buildings and additional machinery. Mr. Morris Stein made a motion to tender to the Passaic plant a three year contract embodying requirements as to sales performance and acquisition of manufacturing facilities. This motion was not seconded. Mr. Louis Haas made a motion that the present contract with the Passaic plant, which expired on April 30, 1950, be extended for a period of one year or until April 30, 1951 and that upon that date a regular contract be extended provided the Passaic plant met the requirements outlined at previous meetings. Seconded Mr. Kanter. Passed.

Kansas City Franchise Renewal

11. The Board noted that the agreements with the Kansas City plant would expire July 1, 1950 and upon motion by Mr. Louis Haas, seconded by Mr. Morris Stein, this agreement was renewed for a five year period.

Ft. Worth Franchise

12. The agreement with the Texas and Oklahoma plant expired on July 1, 1950 and was extended for a five year period upon motion by Mr. M. A. Kaplan, seconded by Mr. E. M. Wuliger.

13. There being no further business before the Board the meeting was adjourned at 11:00 P.M. by the president.

E. H. Bergmann, President, —— —— Vice-President.

——— ———, Secretary.

[fols. 379E-383E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 67

Minutes of the Board of Directors of Sealy, Incorporated Meeting held September 14, 1950, at the Park Lane Hotel, Denver, Colo.

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Charlotte, N.C.

4. Mr. Bergmann presented to the meeting the details concerning the change in the ownership of the stock of the American Bedding Company of Charlotte, North Carolina, and gave his comments regarding that company. Mr. Lawrence gave to the meeting recent sales figures regarding the performance of the Charlotte member, and there was a general discussion regarding this franchise. Mr. E. J. Kanter made a motion that the change in the ownership of the American Bedding Company be approved by the Board and that the contract dated September 19, 1949, and expiring September 30, 1952, be continued with the new owners. This motion was seconded by Mr. L. G. Haas and placed to vote before the members. The Board voted themselves in favor of this motion and instructed Mr. Lawrence to inform the officials of the American Bedding Company of the decision to continue the contract.

Alaska

5. Mr. Bergmann read a request he had received from Mr. Ben Rosenfeld of Pettit Bedding Company of Portland, Oregon, for a franchise for the Alaska territory. There was a general discussion regarding the potentialities of this territory and the sales that were being made in Alaska. Mr. L. G. Haas made a motion that the Pettit Bedding Company be granted a three year license for the Alaska territory on a regular contractual basis with the exception that there would be no minimum royalty payments required for the first three years. This motion was seconded by Mr. Morris Stein and passed.

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[fol. 384E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 68

Minutes of Sealy Board of Directors held in Space 920, American Furniture Mart, Chicago, Illinois, January 8, 1951.

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[fol. 385E] Procedure for Checking Conformity to Sealy Specifications

11. There was a general discussion in regard to the method of checking Sealy re-sale items manufactured by the plants for conformity to the specifications. The following procedure was offered to the meeting, and by motion from Mr. Fouts and seconded by Mr. Brown the Board voted themselves in favor of following and publishing the procedure stated:

Routine of Procedure on Violation of Specifications

1. Sealy Incorporated shall purchase from retail stores one Sealy resale mattress each year from every franchise territory. These mattresses are to be sent to the Sealy space in Chicago for examination by the officials of Sealy, Incorporated for conformance to specifications and review by the Executive Committee.

2. The officials will examine these mattresses for any deviations from specifications with primary emphasis on the following four cardinal requirements:

[fol. 386E] (a) Correct unit as to coil count; construction and gauge of wire.

(b) Sufficiency, quality and specified upholstery materials including the insulator.

(c) Specified or equal grade of cover.

(d) Tailoring and general appearance and incorrect labeling.

3. Upon discovery of any violation covered by the four listed requirements in Paragraph II, Sealy Incorporated officials are directed to purchase, from two additional retail sources, two additional mattresses, manufactured

by the same licensee, of the same resale level for further examinations to determine the prevalence of such violations. These said mattresses are to be purchased at the expense of the licensee, and licensee shall be notified of the violation and of the additional purchase at his expense.

4. Upon discovery of the same or additional violations, Sealy Incorporated officials are directed to purchase from retail sources one mattress in each of five resale brackets, manufactured by the same licensee at the expense of the licensee and licensee shall be notified of the additional violations and of the additional purchases at his expense.

5. All violations will be called to the attention of the Board of Directors at the next regular meeting or at a special meeting, called by the President.

(a) Licensee will be notified in writing of the violations. If the violations are of such nature and extent to warrant a review of the licensee's contract by the Board of Directors for violation of manufacturing requirements in accordance with specifications issued, then the licensee shall be given a 30 day written notice of such meeting and shall be given an opportunity to be heard by the Board of Directors prior to action taken on licensee's contract.

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[fol. 387E] Code of Sealy Ethics

15. Mr. Bergmann read to the meeting his suggestions for establishment of a Code of Sealy Ethics. He stated that he had been in discussion of the suggestion of code of ethics with the members of the Sealy organization and offered the following recommendations. After some discussion the Board adopted the following Code of Ethics and suggested that they be sent out to the Sealy licensees for the purpose of establishing and maintaining friendly relationships between and among the contiguous Sealy plants:

Sealy Ethics

"For the purpose of establishing and maintaining friendly relationships between and among contiguous plants, the following guide of conduct has been adopted by the Sealy Board of Directors in the interest of a good neighbor plicy."

1. Specifications of manufacture will be rigidly followed in all details.

2. No seals of approval obtained by Sealy Incorporated will be used, imitated or duplicated in private brand merchandise.

3. No Sealy advertising, merchandising, illustrations or ideas will be used in private brand merchandise.

4. No distinctive Sealy construction patented or otherwise will be used in private brand work outside of licensees' exclusive Sealy territory *even though used by other competitors.*

[fols. 388E-389E] 5. Sealy bulletins will be kept confidential.

6. Sealy prestige will not be used in the sale of private brand merchandise, within or without, licensees' exclusive Sealy territory and no reference or innuendo will be made that said merchandise is Sealy made.

7. No Sealy licensee will make disparaging remarks regarding another licensee.

8. Private brand merchandise, including upholstered furniture, will not be sold to dealers outside of licensees' exclusive Sealy territory in any of the Sealy display spaces.

9. Critical supplies obtained by Sealy Incorporated will not be used in private brand merchandise nor will said supplies be sold to others or used as an item of exchange.

10. Sale of Sealy merchandise will be avoided when it is known that said Sealy merchandise is being channeled to points outside of licensees' exclusive Sealy territory.

11. No Sealy merchandise shall be sold outside of licensees' exclusive Sealy territory.

12. No confusing or distracting advertisement of

Sealy or private brand merchandise will be placed to break at same time that a known Sealy Incorporated or contiguous plant advertisement is scheduled.

13. Adopted Sealy names will not be used on private brand merchandise.

14. Distinctive Sealy designs of ticking will not be duplicated or imitated on private brand merchandise.

15. Distinctive Sealy designing of upholstery merchandise will not be duplicated or imitated on private brand merchandise.

16. Full cooperation will be rendered every licensee in the sale of Sealy merchandise during markets by each licensee present.

17. The Non-pirating of employees will be strictly observed.

[fol. 390E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 69

Minutes of Board of Directors of Sealy Incorporated held March 15, 1951, Room 1, Hotel Muelhebach, Kansas City, Missouri.

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[fol. 391E] Full Time Employment of E. H. Bergmann

12. The meeting was reconvened at 1:30 P.M. with Mr. Kaplan acting as chairman. Mr. Kaplan asked that all members except Board members be excused from the meeting. Roll call showed the same Directors present as at the morning session with the exception of Mr. Bergmann. There was a general discussion of the advisability of employing Mr. E. H. Bergmann on a full time basis in his position as President of Sealy Incorporated. The Board members suggested that the two vice-presidents, Mr. Haas and Mr. Kaplan, discuss the matter with Mr. Bergmann and reach a conclusion as to salary, etc. Mr. Kaplan acting as chairman of the committee reported that it was agreed upon by Mr. Bergmann and the committee that Mr. Bergmann commence full time application of his efforts to Sealy Incorporated on April 2, 1951. His salary and remuneration is to be $25,000.00 annually, to be divided between Posture Products Incorporated and Sealy Incorporated. The division of the remuneration to be made at the next Directors meetings of Posture Products Incorporated and Sealy Incorporated.

Fisher Products Company of Chester, Pennsylvania

13. Mr. Bergmann, Mr. Lawrence and Mr. Zarish returned to the meeting and introduced to the members Mr. Irving Fisher of the Fisher Products Company, Chester, Pennsylvania. Mr. Bergmann introduced Mr. [fol. 392E] Fisher and stated that the purpose of his ap-

pearance before the meeting was to seek a license agreement in the Philadelphia area. Mr. Lawrence was called upon to give an outline of his negotiations with Mr. Fisher and a report of his trip to Chester, Pennsylvania. Mr. Fisher gave an outline of his intended handling of the Sealy franchise in that area and after answering questions of the Board members was excused from the meeting. Mr. Culp made a motion that the Fisher Products Company of Chester, Pennsylvania be granted a contract for the Philadelphia area, details in regard to territory arrangements, etc., be worked out by Sealy officials. This motion was seconded by Mr. Yulman and passed.

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[fol. 393E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 71

Minutes of Sealy, Incorporated Reconvened Board of Directors Meeting Held in Pittsburgh, Pa., September 15, 1953.

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[fol. 394E] Review of Exclusive Sales Features of Sealy Contracts

5. Mr. Bergmann stated that he would like to bring up the subject of exclusive sales features of Sealy contracts as covered by sections IV, paragraphs 4A and 4B for discussion and comments from the various members. He pointed out that these sections read as follows:

IV:4 "That the licensee shall not; a. manufacture, sell, or deliver within licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy. b. Sell or deliver any Sealy products outside of licensee's exclusive territory, nor sell nor deliver Sealy products if licensee knows or has reason to believe that the purchaser intends to resell or deliver same for resale out of licensee's exclusive territory."

Mr. Bergmann stated that the reason he brought the matter up was that he felt such provisions would ultimately hinder the national growth of Sealy, and that some modification should be worked out to allow the Sealy office in Chicago to sell on a national basis. Also, to solve selling problems arising between contiguous plants. Each member of the Board was asked to relate how this exclusive contract feature affected his particular plant. This discussion clearly indicated that in nearly every case that difficulties existed that were real and serious. It was the census of the Board that the president should appoint a special panel to study the problem and to make a recommendation to the Board for further consideration.

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[fols. 395E-396E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 72

Minutes of Sealy, Incorporated Board of Directors Meeting held at San Souci Hotel, Miami Beach, Florida, April 5, 1954.

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[fols. 397E-398E] Sale Conflictions between Contiguous Plants

12. Copies of the recommendations of the special committee appointed to formulate a program for handling sale conflictions between contiguous plants were given to the Directors. This special committee consisted of J. F. Haas, Chairman, Messrs. Fouts, Fisher, Howard, Kligman, Yulman and E. C. Haas, Sr. After a review of the recommendations of the special committee, Mr. Rudick made a motion that the recommendations be accepted and approved and that an outline of the procedure be presented to the licensees in a Sealy procedure bulletin. This was seconded by Mr. Rosenfeld and passed.

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[fols. 399E-400E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 74

Minutes of the Board of Directors Meeting held in Chicago, September 21st, 1954.

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[fol. 401E] Brooklyn Relocation Request

13. There was a general discussion regarding the proposal of the Brooklyn plant to try to locate a new plant in a territory outside of their own franchised area. Mr. Bergmann stated that while it was not a matter to be acted upon by the Board of Directors inasmuch as present contracts would prohibit such a move he would like to get the reaction of the Board Members as to their feeling [fol. 402E] in the matter. There was a consensus by most members that considerable difficulty would be created by locating one licensee plant in the territory under franchise to another and that they would be unfavorable to such a request if it was made direct to them.

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Discussion on Sale of Private Brands Outside Territories

18. There was a general discussion on the subject of the sale of private brand merchandise in [fols. 439E-404E] contiguous territories. Mr. Bergmann stated that problems have come about due to the growth and expansion of the Sealy plants along with the recognized acceptance of the Sealy name. After some discussion on the subject by various members it was suggested that the members write to Mr. Joseph Haas their suggestions as to approach or solve the particular problem, sending a copy of the letter to Mr. Bergmann, Mr. Haas to correlate the replies and submit a report at a later meeting.

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[fol. 405E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 75

Minutes of the Board of Directors Meeting held November the 11th, 1954, Conrad Hilton Hotel, Chicago, Illinois.

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[fol. 406E] Report on Vigilante Program

9. Mr. Bergmann gave a report on the letters he had written and the replies he had received to those letters in regard to mattresses purchased on the Vigilante Program for the purpose of checking conformity to specifications. At the conclusion of the report the Board expressed itself heartily in favor of continuing the Vigilante Program and expressed their feeling that it had excellent merit.

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[fols. 407E-408E] Conflict Arising From Sale of Private Brands

14. Mr. Bergmann stated that considerable discussion and work had been done on the problem of the conflict arising from sale of private brand merchandise in adjoining Sealy territory and that the staff and the attorney for the corporation were offering an outline of a method to handle this problem. It was brought to the Board's attention that competition between Sealy products and its licensees' private brands is either expressly permitted in most licensee contracts or by implication, and interpretation accepted as within the established policy of Sealy. However, what is absolutely prohibited is the sale of private brand merchandise directly or indirectly, under the Sealy banner, or using the Sealy name or prestige in any way to merchandise or sell private brand merchandise. Various possible solutions were discussed and the meeting developed into a rather lengthy discussion regarding

this subject. Due to the many legal problems involved the consensus of the discussion was that the parties effected get together to see if they can work out a solution between them. Mr. Bergmann offered the services of himself and his staff to help reconcile any differences brought up by the parties.

[fol. 409E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 76

Minutes of the Board of Directors Meeting held in Chicago, Illinois, January the 6th, 1955, at Sealy, Incorporated Offices, 666 North Lake Shore Drive.

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[fol. 410E] Exchange of Territory Chicago & Detroit Plants

6. Mr. Bergmann reported to the meeting that the Chicago plant had agreed to release the following counties in the state of Michigan to the Detroit plant effective February the 28th, 1955: Bay, Jackson, Saginaw and Shianasee. The Chicago plant also agreed to transfer the county of Ingram to the Detroit plant if by February the 28th, 1956 they had not accomplished a sales potential in that county which amounts to approximately $45,000 of sales. Mr. Bergmann thanked Mr. Kaplan for his consideration in the matter, and the transfer of the counties to the Detroit plant was received with acclamation by the Board.

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[fol. 412E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 77

Minutes of the Board of Directors Meeting held in Memphis, Tennessee on April 20, 21, 22, 1955.

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Minutes of 1/6-7/55

5. There was a review of the minutes of the Board of Directors meeting of Jan. 6-7, 1955. The president reported the exchange of territory under Item #6 between Chicago and Detroit plants had been completed and that both contracts had been amended accordingly.

Mr. Kaplan made a motion to approve the minutes of Nov. 11 and 12, 1954, and Jan. 6 and 7, 1955 as reviewed. This was seconded by Mr. Walzer and passed.

[fol. 413E] Minutes of Executive Meeting 2/3/55

6. There was a review of the minutes of the Executive Committee meeting of Feb. 3, 1955. Mr. Bergmann stated the current information regarding the Golden Sleep promotion was being withheld until after this board meeting. Item #8 relating to the size of the Advertising Committee was reviewed. The president stated the primary reason for the size of this committee was to balance it between plant representatives doing a large resale and those doing a large promotional business. Also, he felt it was necessary to bring in people who were deemed to be advertising minded and to train new members. He recommended the following policies to enable the committee to function as proposed:

(1) Policies and programs can only be adopted by approval of the full committee.

(2) The Steering Committee is to have two functions:

a. To act as a planning committee for the full committee.

b. To serve as an executive committee on advertising and merchandising to the Sealy staff on occasions when quick decisions or approvals are re-

quired on programs approved by the full committee.

(3) Effective with the November, 1955 annual meeting the full Advertising and Mechandising Committee shall consist of the Chairman of the Executive Committee and one member from each of the six geographic regions.

(4) The Steering Committee is to consist of the Chairman of the Executive Committee and one member from each of the three regions that produces the greatest income for the corporation.

Several recommendations were made by various members of the board in regard to the Advertising Committee. Mr. Walzer expressed his opposition to the present size of the committee and stated it has become unwieldy because of the size. He stated time was lost in getting the opinion of members and there is difficulty in getting work done. He also expressed his opposition to the necessity for a [fol. 414E] division of the committee. Mr. Kaplan stated the primary objective of the Advertising Committee is to prepare and guide advertising policies of Sealy with reference to the amount of money available for expenditure. He stated the job of the chairman in his opinion is to organize the meeting to promote creative thinking among members and not to have the committee serve primarily as a pick and shovel team. He felt the people on the Advertising and Merchandising Committee should be creative and have directive ability with national effort in mind rather than local effort.

Size of Advertising Committee

Mr. Brown made a motion that the Board immediately direct the president to select a chairman of the Advertising Committee and to meet with that chairman to pick members, not to exceed five in number. This motion was seconded by Mr. Culp and passed. Mr. Fouts suggested an amendment to the motion, that the members be selected by qualification and possible geographic representation; this was not incorporated in the motion but the president stated he would be guided by the recommendation.

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[fol. 415E] Report of the Planning and Expansion Committee to the Board of Directors of Sealy, Incorporated

On January 27, 1954, our President, Mr. Bergmann, appointed various Committees which included the Planning and Expansion Committee. Members of this Committee consist of:

H. B. Fouts, Chairman
L. G. Haas
Ben Rosenfeld
E. M. Wuliger
M. H. Yulman
P. D. Brown

The Committee tried, on several occasions, to hold meetings, but was unsuccessful. Therefore, the meeting held in Chicago, September 18th and 19th, 1954, was the first formal meeting of the Committee. Mr. Yulman advised that he would not be able to attend the meeting, therefore, Mr. Bergmann appointed Mr. P. D. Brown to serve on the Committee, and he was adopted as a permanent member.

The roll call shows the following present: H. B. Fouts, L. G. Haas, Ben Rosenfeld, and P. D. Brown. Mr. M. H. Yulman was not present at either of the meetings. Mr. E. M. Wuliger was not present on the 18th, but attended the meeting on the 19th.

The responsibilities of this Committee as outlined by Mr. Bergmann are as follows:

A. Study future requirements of Corporation and its Licensees.
B. Establish goal and set up program of procedure.
C. Recommend to the Board of Directors expansion of personnel deemed necessary to fill requirements of the Corporation, or additional services to member Licensees.

The Committee's first attempt was to set up procedure and rules. We decided that because of the nature of this Committee's responsibilities, as outlined above, it should consider any and all matters both present and future that

pertained to the growth, expansion, and operation of Sealy, Inc., and that consideration of any and all subjects should not, in any way, be considered as interfering with the responsibility of any of the other Committees. It is the desire of this Committee, when possible, to have a [fol. 416E] unanimous agreement on any and all matters that are to be recommended to the Board, but that where that is not possible, a recommendation will not be submitted to the Board, unless it had received the approval of not less than *four* (4) members of the Committee.

Organization:

We suggest the officers of Sealy, Inc., consist of a President; one or more Vice President; a Secretary; and a Treasurer.

There is nothing new in the above suggestion, except that you have probably already noticed that we have eliminated the title of Exchange Vice President. We did this because we believe that the title under present operation is meaningless, and since Mr. Bergman is actually General Manager of Sealy, Inc., there is no need for the title of Executive Vice President, because it tends to confuse. We hope Mr. Lawrence will understand our aim and that he will be agreeable to the streamlining of the officer titles. This Committee feels that the best interest of Sealy, Inc., would be served, if Mr. Lawrence were elected Secretary and Treasurer. It is this Committee's judgment that the welfare of Sealy, Inc., could best be served if *all* officers were on the Sealy Staff, and were employees of Sealy, Inc.

Management:

The postwar Planning Committee, on December 3, 1943, among other recommendations, strongly recommended that the President be required to live and headquarter in the same City in which Sealy's home office is located. At that time, Mr. Haas was President, and lived and headquartered in Memphis, Tenn. Again, in April, 1946, the Committee made the same recommendation. This Committee now, on September 20, 1954, but with several new members, again recommends that the President of Sealy, Inc.,

as soon as possible, headquarter in the Sealy, Inc., national offices in Chicago. We make this recommendation in the interest of all, even the President himself. We believe that he can better, and more easily, handle the tremendous obligations that rest upon his shoulders if he officed at headquarters, and we do sincerely hope that Mr. Bergmann will give this recommendation serious consideration and, if possible, comply with it as soon as possible.

We recommend that the title of General Manager be added to that of Mr. Bergmann, now President, and that several additional persons and titles be added to the Sealy Staff.

We feel that Sealy, Inc., should have a General Sales and Promotion Manager, who would operate in that capacity, and under him, we recommend that [fol. 417E] three (3) additional men be added to the Staff; District Sales and Promotion Managers. One to be located in the East, one in the Midwest, and one in the West. That they be assigned districts and that they be responsible for the sales and promotion of the Sealy plants within their district. That they headquarter in the most convenient location, to best serve the plants in their area. That they spend their entire time and effort in that capacity.

It is the Committee's belief that it is unfair to any Sealy Licensee, to be requested to serve as Chairman of the Advertising Committee. We believe that responsibility should be carried by some capable person on the Sealy Staff, but that the membership of that Committee be made up of Licensees, who would be named by the President.

In addition to the above enlarged Staff, we recommend that some qualified person be hired for the purpose of improving and expanding Sealy's Upholstering Department. That this man be given the title of Director of the Upholstering Division, and that his responsibilities would be to increase the output of Dual Sleep and other upholstered items in the Sealy line. That he work with the plants, with the designer, with the suppliers, etc., and that he use his efforts to induce those plants who are not presently making upholstered furniture, to do so. It is the Committee's belief that each and every Licensee should, as soon as possible, be required to produce Dual

Sleep merchandise. Also, that a considerable volume could be added if the Dual Sleep line included such items as matching chairs, revolving T.V. chairs, and matching platform rockers.

Board of Directors:

It is the opinion of the Committee that the Board of Directors should, at all times, consist of capable, energetic, ambitious, and sound thinking men, who have the interests of Sealy, Inc., at heart, and that it is to the interest of Sealy, Inc., to use the talents and abilities of as many of its members as possible, therefore, the Board should be filled at all times, with men of that caliber. However, the Committee does feel that there is considerable danger in the present policy of having alternates serving on the Board of Directors. This is a very ticklish subject and one which must be thoroughly understood, otherwise, it might cause offences. The Committee wishes to make it very clear that it has the highest regard for those alternates who are presently serving on the Board, and that the *only* reason for recommending the elimination of alternates, is because of the dangers of such a policy. Example: If one Board member is privileged to have an alternate, it would be very difficult to refuse the same privilege to each and every Board member. Therefore, in order to be absolutely fair to everyone concerned, the elimination of alternates entirely, would be the answer. [fol. 418E] However, if we do not want to go that far, we might recommend that no alternates other than those presently serving, are to be permitted, and that reasonable effort be made to correct that situation as soon as practical.

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Territories:

The Committee understands that within the near future, reports of shipments of Sealy merchandise will be given by trading areas. It is the opinion of the Committee that many trading areas in this entire country are not producing the volume of Sealy business, that could reasonably be expected, and that after this survey has been completed,

that the management of Sealy, or the Board, or both, try to find ways and means of correcting the conditions where they are not satisfactory.

We believe that in many instances, territories are entirely too far from the sources of supply, or in other words, they are entirely too far from the Sealy plant which serves them. Therefore, additional factories, or warehouses, should be established, to serve those areas. That solution, or some other, undoubtedly can be, or at least should be found to bring all territories up to the reasonable par, and by so doing, it undoubtedly, would increase the overall volume of Sealy, Inc., tremendously. The Committee recommends that this matter be given serious consideration, and that some attempt be made to correct it.

[fols. 419E-420E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 78

Review of Minutes by the President

April 20, 1955—Board of Directors Meeting

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[fols. 421E-422E] Review of Minutes by the President

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16. Item 7, page 10. In connection with intra-plant conflictions Mr. Bergmann stated that he had met with Mr. Fouts May 20th and 21st in Des Moines, Iowa, prepared a preamble (copy of which was presented at this meeting), and had selected Mr. James Hume, senior partner of the firm of Wilkinson, Huxley, Byron & Hume, as the third member of the committee; that on June 2nd a letter to all complainants had been issued calling a meeting on June 16th prior to which the complaint should be reduced to writing, and that both complainants and others interested would be heard at that time; that a meeting had been held on June 16th and a fifteen day period given within which all parties might make additional responses to the committee.

The committee will meet and make a final recommendation to the September meeting of the board.

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[fol. 423E] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 79

Report of Committee Appointed to Investigate and Make Recommendations in Connection with Conflict Arising from the Sale of Private Brand Merchandise.

The committee authorized by the Board of Directors at the April meeting, and consisting of E. H. Bergmann, Harry B. Fouts and James P. Hume, has met, read and discussed the complaints, heard evidence and listened to the arguments and suggestions of all interested parties. As a result the committee unanimously submits the following findings and recommendations:

1. That within the limits of the license contract and the law Sealy must and will protect its name and trademark and can do so up to the limit but not beyond, of preventing or unreasonably abridging the sale of private brand merchandise; and that Sealy may and must insist that such sales be fully and completely divorced from any connection with Sealy by any act of commission or omission on the part of any licensee including the use in common for Sealy and private brand merchandise of trucks, cartons, bags, salesmen's cards, stationery, invoices, checks, adjustment slips, credits, vouchers, or personnel.

2. That Sealy cannot under any circumstances permit violation of its trademark and trade name rights and that Sealy is compelled to take any and all steps that may be necessary to prevent infringement, misuse or dilution of any or all of its trademarks or trade names.

3. That both under the license contract and the law the right of Ohio Mattress Company or any other licensee to sell private brand merchandise within or without its Sealy territory is recognized and may not be terminated or unreasonably abridged.

4. That the Ohio Mattress Company in conducting the sale of its private brand mattresses has consciously and knowingly employed the good will and reputation of the trademark and trade name of Sealy as well as its own reputation as a Sealy licensee.

5. That such employment has resulted from numerous acts which collectively have had the effect of associating

Ohio Mattress Company's private brand mattresses with the name Sealy and the reputation of Sealy, Inc. to the end that the reputation for high quality mattresses possessed by Sealy, Inc. has been and is being appropriated and applied to Ohio's private brands and the sale thereof. [fol. 424E] 6. That such use and employment by Ohio Mattress Company has been carried out with such knowledge on its part and with such ability by it to control the acts occurring in the market place with respect to the sales thereof as to constitute wrongful use of Sealy's trademarks and trade names in violation of Ohio's contract with Sealy, giving rise to the right of cancellation of said contract by Sealy, upon arbitration thereof.

7. That the committee recognizes the possibility that it cannot erase the knowledge already conveyed in certain cases that the Ohio Mattress Company is a Sealy licensee but believes that if all acts heretofore condemned are eliminated and the conduct of Ohio Mattress Company or any other licensee is rigidly policed, this memory will fade and the private brand products of Ohio or such other licensee forced to compete as they should upon their own merit and reputation.

8. That in order to meet the particular problem as it presently exists, and to dissipate the effects of the wrongful acts, and to purge itself of intent to continue or repeat such conduct, the Ohio Mattress Company should refrain from making any further sales of private brand merchandise outside of its Sealy territory to those outlets specifically referred to in the complaints until the wrongful effects of the conduct of the Ohio Mattress Company which created the dilution and injury to Sealy are fully dissipated.

9. Whereas the substance of the foregoing statements have been directed primarily to the Ohio Mattress Company the principles herein stated are applicable to all licensees with the same force and effect.

10. That in view of the fact that the present royalty program which exempts the sale of private brand merchandise outside of the Sealy territory and thus places a premium upon such sales, the committee recommends the Board reexamine the royalty program with the view of including such sales within the royalty program.

Respectfully submitted, E. H. Bergmann, Harry B. Fouts, James P. Hume.

[fol. 425E] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 80

Minutes, Board of Directors Meeting Sealy, Incorporated, Held at the Conrad Hilton Hotel, Chicago, Illinois November 10, 1955.

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[fol. 426E] Arbitration Committee

9. The president stated the matter of the action to be taken on the "Report of the Committee Appointed to Investigate and Make Recommendations in Connection with Conflicts Arising from the Sale of Private Brand Merchandise" had been considered at the Sept., 1955 meeting, and eight (8) members of the board had requested that all material submitted to the special committee be made available to them, and that action be withheld pending an opportunity on their part to review the same.

The president called on legal counsel, who had presided at the special meeting of such eight (8) members, to give a report thereof. Counsel advised that the meeting had been held at 10:00 A.M., Nov. 10, 1955, was attended by all eight (8) members, and the matter thoroughly discussed.

As a result thereof, the group had unanimously approved the recommendations and findings of the special committee, but had suggested it be made clear that the principles enunciated and the recommendations based upon such principles be adopted as the general policy of the entire board and strengthened by a further provision that, in the event the remedial recommendations suggested in such situations were not complied with by an affected licensee, provision should be made to place such contract in arbitration, or that such contract be terminated (depending upon the type of contract involved) unless the affected licensee complied with the remedial recommendations made by the committee. The group also approved the findings of fact made by the special committee.

A full discussion ensued, E. M. Wuliger pointing out that since the committee had been appointed to investigate general conflicts without any special reference being made to any particular licensee, the terms of the recommendations should be more general in application.

[fols. 427E-428E] H. B. Fouts, a member of the special committee, stated that while this was true, the committee could not ignore the fact that specific complaints had been made and the committee had found certain facts and made recommendations with regard to a specific situation as well. It was the consensus of opinion that such specific findings were within the general authority of the special committee.

Thereupon, upon motion of M. H. Yulman, seconded by Wm. H. Walzer, the following resolution was unanimously adopted:

Resolved: That the recommendations of the special committee appointed to investigate and make recommendations in connection with conflicts arising from the sale of private brand merchandise be deemed by this board to be of general application to all licensees insofar as such report contained statements of policy, established proposed standards of operation, and made recommendations of remedial action.

Further Resolved: That in any situation where remedial recommendations are not complied with by an affected licensee, that such licensee's contract involved be placed in arbitration or terminated as the case might be.

Further Resolved: That the findings of fact by the special committee on the particular complaint involved be accepted, and that Paragraph 8 of the recommendations be amended by adding the following sentence to said paragraph: "The implementation of this recommendation shall be effected by a joint agreement between the staff, the complainants, and the Ohio Mattress Company designating which accounts the Ohio Mattress Company should not solicit and the period of time during which such restriction should be exercised; and, in case of a failure of such parties to so agree, the designation of such accounts and the period of time involved shall be referred to the board for final action."

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[fols. 429E-430] IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT NO. 82

Sealy, Incorporated, Minutes, Board of Directors Meeting, Held at The Principal Office of the Corporation, 666 Lake Shore Drive, Chicago, Illinois, November 14, 1956.

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Balance Sheet as of Sept. 30, 1956

4. The statement of assets and liabilities as of Sept. 30, 1956, was presented and reviewed. The board was apprised of the problems which had been encountered in connection with the Orlando plant, beginning in June, 1956, and continuing to their termination by purchase of the plant by the corporation on Sept. 7, 1956.

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[fol. 431E] Orlando and Georgia Territory

11. The President brought before the Board the offer of E. M. Wuliger to purchase the Orlando, Florida, plant, for the sum of $105,000.00, and to take over the State of Georgia, the offer for Georgia being conditional upon (a) his obtaining the Florida plant, and (b) that there be no requirement for the immediate establishment of a plant in Georgia. The President revealed that a financial statement had been given by Mr. Wuliger which indicated he could carry out the program.

It was also announced that an offer had been made for the Florida plant by a group consisting of H. F. Kaufman, M. I. Walzer, W. H. Walzer and M. H. Yulman. A full discussion ensued.

It was the concensus of opinion of the members of the Board that the offers be considered only if the successful bidders would agree to take both the Georgia and Florida territories, with the understanding that immediate steps be taken to develop the Georgia territory, and that the license contract for Georgia should call for royalties on actual sales for the first year, and for the remaining years either the actual sales or 25% of par during the second

year, whichever was greater; actual sales of 50% of par during the third year, whichever was greater, and that at the end of the third year a plant would be established unless full par had been achieved; that, assuming satisfactory compliance with the contract for three years, a five year contract for Georgia be granted with royalty provisions of actual sales or 60% of par, whichever was greater, during the fourth year; actual sales or 70% of par, whichever was greater, during the fifth year; actual sales or 80% of par, whichever was greater, during the sixth year; actual sales or 90% of par, whichever was greater, during the seventh year; and actual sales or 100% of par, whichever was greater, during the eighth year.

It was brought out that in relinquishng Georgia the Memphis licensee had agreed to serve that state until a new licensee took the territory over and established a plant there. At the request of the President, Mr. E. C. Haas, Sr., representing the Memphis licensee, agreed to waive the requirement of a plant and stated that the territory should be considered released to the new licensee approved by the Board.

Both E. M. Wuliger and the group of four agreed to the conditions and left the room. On a vote it was resolved that the Georgia and Florida license contracts, on the con- [fol. 432E] ditions set out above, which included $105,000.00 purchase price for the Florida plant, should be given to the group of four: Messrs. H. F. Kaufman, M. I. Walzer, W. H. Walzer and M. H. Yulman.

* * * * * * *

Sealy Stock Owned by Sidney Sutherland

14. The Board was apprised of the fact that E. M. Wuliger had made an offer of $4,000.00 to Sidney Sutherland for the Sealy stock owned by him and a full discussion ensued. On motion of Ben Rosenfeld, seconded by L. G. Haas, it was unanimously resolved that the executive office be instructed to ascertain whether or not it would have any effect on the value of the stock if E. M. Wuliger purchased it, or if the corporation purchased it, and, assuming no change would result, and all things being equal, that E. M. Wuliger be allowed to purchase the stock rather than the corporation.

* * * * * * *

[fol. 433E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 83

May 26, 1941.

Territory—J. Osiason & Sons Company
154 Broadway, Fall River, Mass.

(Revised territorial agreement effective April 1st, 1941)

Rhode Island

Entire state

Massachusetts—Counties of—

Middlesex County, less the following cities:

Melrose	Waltham	Burlington
Arlington	Reading	Everett
Waverly	Lexington	Belmont
Wakefield	Medford	Newton
Wobars	Cambridge	Winchester
Maldon	Watertown	
Somerville	Stoneham	

Worcester County
Bristol County
Barnstable County
Dukes County
Nantucket County
Plymouth County—list cities of Hingham & Hingham Center
Norfolk County, less the following cities:

Wellesley	Needham	Baintree
Milton & E. Milton	Dedham	Mattapan
Weymouth—E. H. & So.	Quincy	
	Brookline	

Less unlisted intermediate towns, villages and rural areas within a fifteen (15) mile radius of Boston proper.

[fol. 434E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 93

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

N. S. Pittsburgh, Pa.
Telephone Cedar 3365-6-7-8

Memphis, Tennessee
September 10, 1942

Sealy, Incorporated,
Chicago. Ill.

Dear Mr. Craig,

Enclosed I am handing you a signed copy of the letter today received back from Sealy Mattress Company of Chicago with reference to the eleven counties which we are conceding to them on the basis that they are their territory until we revoke this permission.

Please file this in your book under territories.

Sincerely, Sealy, Incorporated, J. R. Haas.

JRH'H

[fol. 435E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 103

Memphis

The following states in their entirety.

Alabama	Arkansas	Florida
Mississippi	Tennessee	
Louisiana	Kentucky	

The following territory in Indiana

Jennings	Lawrence	Pike
Jefferson	Orange	Gibson
Scott	Crawford	Spencer
Clarke	Perry	Warwick
Floyd	DuBois	Vanderberg
Harrison	Martin	Posey
Washington	Davies	
Jackson	Knox	

The following territory in Illinois

Clarke	Clinton	Perry
Crawford	Madison	Randolph
Lawrence	Christian	Monroe
Wabash	Effingham	Washington
Cumberland	Shelby	Bond
Jasper	Fayette	Montgomery
Richland	Marion	Sangamon
Edwards	Jefferson	Macoupin
White	Franklin	Morgan
Gallatin	Williamson	Scott
Hardin	Johnson	Pike
Polk	Massac	Green
Saline	Pulaski	Jersey
Hamilton	Alexander	Calhoun
Wayne	Union	Clay
St. Clair	Jackson	

The following territory in Missouri

Clarke	Osage	Dent
Scotland	Gasconade	Crawford
Schuyler	Franklin	Washington
Adair	Warren	Iron
Knox	St. Charles	Reynolds
Lewis	St. Louis	Carter
Marion	St. Louis City	Ripley
Shelby	Webster	Butler
Macon	New Madrid	Wayne
Randolph	Pemiscot	Madison
Monroe	Jefferson	St. Francois
Ralls	Miller	St. Genevieve
Pike	Maries	Perry
Lincoln	Pulaski	Bollinger
Montgomery	Phelps	Cape Girardeau
Audrian	Texas	Scott
Callaway	Howell	Mississippi
Boone	Oregon	Stoddard
Cole	Shannon	Dunklin

[fol. 436E]

Allen	Grant	Decatur
Whitley	Blackford	Franklin
Adams	Randolph	Ripley
Wells	Madison	Dearborn
Huntington	Hamilton	Ohio
Wabash	Clinton	Switzerland
Jay	Montgomery	Bartholomew
Delaware	Warrenn	Johnson
Tipton	Park	Brown
Boone	Hendricks	Morgan
Tippicanoe	Marion	Monroe
Fountain	Hancock	Green
Vermillion	Henry	Sullivan
Putnam	Wayne	Vigo
Miami	Union	Clay
Cass	Fayette	Owen
Carroll	Rush	
Howard	Shelby	

[fol. 437E] Following territory in Iowa

Howard	Louisa	Dubuque
Allamenkee	Henry	Jones
Fayette	Wapalio	Clinton
Bremer	Scott (temporarily)	Muscatine
Delaware	loaned to Chicago)	Iowa
Jackson	Van Buren	Washington
Limm	Winneshiek	Des Moines
Cedar	Clayton	Jefferson
Johnson	Chickasaw	Davis
Keokuk	Buchanan	Lee

Following territory in South Georgia

Quitman	Mitchell	Benhill
Randolph	Terrell	Irwin
Clay	Lee	Barrian
Calhoun	Worth	Cook
Early	Colquitt	Loundes
Baker	Thomas	Echols
Miller	Brooks	Lanier
Seminole	Camden	Atkinson
Decatur	Tift	Coffee
Grady	Doughtery	Bacon
Clinch	Ware	Pierce
Charlton	Brantley	
Glymm	Turner	

Balance of territory in Georgia North of the line above the counties listed were originally the property of the Memphis Plant but were ceded to Sealy, Inc., and earmarked for a new Sealy Atlanta Plant.

Entire states of North Carolina and South Carolina

Were originally the property of the Memphis Plant but were ceded to Sealy, Inc., and earmarked for one or two new Sealy plants.

The following territory in the State of Indiana has been temporarily granted to Memphis for an Indianapolis Warehouse operation pending time when Sealy is able to secure an Indiana Plant.

[fol. 438E]

Allen	Howard	Decatur
Whitley	Blackford	Franklin
Adams	Randolph	Ripley
Wells	Madison	Dearborn
Huntington	Hamilton	Ohio
Wabash	Clinton	Switzerland
Jay	Montgomery	Bartholomew
Delaware	Warrenn	Johnson
Tipton	Park	Brown
Boone	Hendricks	Morgan
Tippicanoe	Marion	Monroe
Fountain	Hancock	Green
Vermillion	Henry	Sullivan
Putnam	Wayne	Vigo
Miami	Union	Clay
Cass	Fayette	Owen
Carroll	Rush	
Grant	Shelby	

[fol. 439E] Following counties in S. Georgia

Quitman	Mitchell	Benhill
Randolph	Terrell	Irwin
Clay	Lee	Barrion
Calhoun	Worth	Cooke
Early	Colquitt	Lounder
Baker	Thomas	Echols
Miller	Brooks	Lanier
Seminole	Camden	Atkinson
Decatur	Tift	Coffee
Grady	Daugherty	Bacon
Clinch	Ware	Pierce
Charlton	Brantley	
Glynn	Turner	

Balances of territory in Georgia, north of the line above the counties listed were originally the property of the Memphis Plant but were ceded to Sealy, Inc. and earmarked for a new Sealy Plant at Atlanta.

Entire States of North and South Carolina

Were originally the property of the Memphis Plant but were ceded to Sealy, Inc., and earmarked for one or two new Sealy Plants.

The following territory in the State of Indiana has been temporarily granted to Memphis for an Indianapolis Warehouse operation pending time when Sealy is able to secure an Indiana Plant.

[fol. 440E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 106

Territory—Pittsburgh, Pennsylvania (Fort Pitt Bedding Company)

The entire State of West Virginia

The entire State of Maryland

Washington, D.C.

The following counties in the State of Virginia

Shenandoah Frederick Warren Fauquier Loudoun Arlington Prince William Stafford	Balance of the territory in Virginia south of the counties listed were originally the property of the Pittsburgh Plant but were ceded to Sealy, Inc. and earmarked for a new Sealy—Richmond plant.

The following counties in the State of Pennsylvania

Greene	Indiana	Snyder
Washington	Allegheny	Union
Fayette	Beaver	Sullivan
West Moreland	Lawrence	Lycoming
Sommerset	Butler	Clinton
Bedford	Armstrong	Cameron
Fulton	Mercer	Elk
Huntington	Venango	Forest
Mifflin	Clarion	Warren
Juniata	Jefferson	Crawford
Blair	Clearfield	Erie
Cambria	Center	

[fol. 441E] The following counties in the State of Ohio

Mahoning	Jefferson	Athens
Columbiana	Belmont	Meggs
Carroll	Monroe	Gallia
Harrison	Washington	Lawrence

(The balance of Southern Ohio south of the Cleveland territory including Zanesville, Columbus, Portsmouth, Springfield, Dayton, Cinncinati, etc. was originally the property

of Pittsburgh Plant but is earmarked for a new Cincinnati Sealy territory.)

[fol. 442E] Pittsburgh Sealy Territory
(By counties)

Pennsylvania

Sullivan	Fulton	Forest
Lycoming	Bedford	Warren
Clinton	Blair	Erie
Union	Elk	Venango
Snyder	Bradford	Mercer
Center	Jefferson	Lawrence
Mifflin	Indiana	Butler
Juniata	Somerset	Beaver
Cameron	Fayette	Allegheny
Clearfield	Westmoreland	Washington
Cambria	Armstrong	Greene
Huntington	Clarion	

Ohio

Mahoning	Bellaire	Morgan
Columbiana	Guernsey	Washington
Carroll	Monroe	Meigs
Jefferson	Noble	Gallia
Harrison	Muskingum	Lawrence

West Virginia

Hancock	Calhoun	Hampshire
Brooke	Wirt	Mineral
Ohio	Ritchie	Grant
Marshall	Kanawha	Preston
Wetzel	Clay	Tucker
Tyler	Braxton	Monongalia
Pleasants	Gilmer	Marion
Wood	Lewis	Harrison
Jackson	Upshur	Doddridge
Mason	Webster	Taylor
Cabell	Randolph	Barbour
Putnam	Pendleton	
Roane	Hardy	

Maryland

Garrett	Allegany

[fol. 443E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 110

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

N. S. Pittsburgh, Pa.
Telephone Cedar 3365-6-7-8

10-7-42

Mr. J. R. Haas, President,
Sealy Incorporated,
666 Lake Shore Drive,
Chicago.

I have made a very careful survey and sales analysis of all territory now open in United States and Canada. Based upon population, buying power, trading areas and freight rates, I have divided this open territory into areas each of which is suitable for the operation of an additional Sealy plant.

The open territory divides itself roughly into four sections: The middle western states; North Atlantic Seaboard; the south Atlantic Seaboard and the Dominion of Canada. The following review outlines an expansion program for Sealy through these areas based on the writer's opinion of the most logical calendar of immediate and future Sealy development work.

A. The Middle Western States:

1. Immediately available for Sealy franchise is the St. Paul-Minneapolis area embracing Minnesota, N. Dakota, the bulk of S. Dakota and a strip of counties in northwest section of Wisconsin with a population of four million. The best possible representative for the area from point of view of Sealy Incorporated is the United States Bedding Co., of St. Paul or a division thereof. This company operates three different factories. The territory will yield a minimum of $300.00 per month to Sealy with a possibility of $600. a month, based upon sales of labels or a percentage of Sealy volume. Possibly another $100. a month could be realized by a license to the upholstering division of this company on Sealy's 1% plan.

2. Western Michigan embracing all of the lower peninsula except the City of Detroit and with a radius of 75 miles around Detroit, constitutes a Sealy territory of approximately 2 million people. Our plant should be situated in Grand Rapids and the best possible representative for Sealy at that point is the American Auto Felt Co. This territory should yield a minimum of $250.00 a month and predicated upon successful development the territory could ultimately yield a maximum of $500.00 a month. This company manufactures quilts for mattress tops which item has proved satisfactory and could be incorporated in the regular Sealy line of innerspring mattresses, when the spring filled mattress returns to the industry.

[fol. 444E] 3. Detroit: This area embraces the City of Detroit and surrounding area of 75 miles with a population of approximately 3 million. The territory should yield a minimum of $300.00 a month and after intensive sales development, as much as $600.00 a month to Sealy. The best representative for this area would be a new corporation in which Messrs. Bowersox and Brody should be interested. Such a concern might be out of the realm of possibility for the duration of the war. The next best representative in this area would be Mr. Harry Kraft, Progress Bedding Co., who states he is not interested until his son returns from the Army. No other suitable Detroit manufacturer exists.

4. Indianapolis: The state of Indiana with exception of the northwestern tier of counties adjacent to Chicago constitutes with a population of three million, constitutes an ideal distribution area to round out the trading area, so Indiana now under contract to U. S. Bedding should be released to Indiana. Similarly a tier of counties in northern Indiana should be released by Chicago. The yield to Sealy from this plant should be a minimum of $250.00 per month and based on proper sales development, as much as $500.00 per month. I cannot recommend any existing Indianapolis manufacturer for the franchise with the exception of Hirschman, who is now a member of the Serta Group.

5. St. Louis: The St. Louis area embraces the City of St. Louis, eastern Missouri and southern Illinois with a population of approximately three million. Best representative for Sealy in this area would be a subsidiary plant of the U. S. Bedding Co., Memphis. This area should yield

a minimum to Sealy of $250.00 a month and with proper sales development as much as $500.00 per month.

6. Dayton-Cincinnati Area: This area in southern and western Ohio embraces approximately two million population. Harry Sudowitz of Dayton Mattress Co., is properly situated and sufficiently financed to recommend him as the proper Sealy representative for the area. The minimum revenue to Sealy should be $250.00 per month and with intensive sales development by Sudowitz as much as $500.00 per month should come to Sealy through a percentage on the sales. His current volume is small but the territory is rich and his financial resources for Sealy development of the area unlimited. He owns the Toledo Mattress Co., and if he could obtain this northwestern Ohio territory from Cleveland, Sealy could collect another $250.00 minimum from Toledo Mattress Co., and as much as $400.00 per month based upon sales development.

The above constitutes a complete plan for Sealy coverage for the middle west to supplement our present results out of Kansas City, Des Moines, Milwaukee, Chicago and Cleveland.

B. Eastern Seaboard States:

1. North Atlantic Seaboard: Syracuse and Up-state New York. Population approximately three million. Minimum $250.00 per month. Probable maximum $500.00 per month through a percentage on sales. Pennfield Manufacturing Company, Syracuse is the only concern in the area open to Sealy and suitable for the franchise. They are keenly interested in a franchise at a future date but not before 1943 when the labor situation is more definite.

2. Western New England States. The territory embraces Connecticut, western Massachusetts and all of Vermont. Population approximately two million. Minimum $250.00, probable maximum $400.00. Anyone of three manufacturers is suitable for Sealy franchise. Waterbury Mattress Co., Capitol Bedding Co., of Hartford or Standard Mattress Co., of Springfield. Walzer of Waterbury are known to Sealy. Capitol of Hartford is as yet unknown to Sealy. Levinson of Standard Mattress Co. is known to Marquardt. All three [fol. 445E] have reasonable finances suitable plants and are well situated geographically to serve the area.

3. Philadelphia: Embraces Philadelphia County and a radius of 25 miles in surrounding eastern Pennsylvania counties plus southern New Jersey and the state of Delaware. The city of Wilmington Del. was granted to Sealy at Baltimore but should be yielded by Mr. Gordon because of its proximity to Phila. and trade practices. Population approximately three million. Minimum $250.00 per month. Probable maximum based on sales results $500.00 per month. Several excellent manufacturers of reputation are there any one of whom would be suitable in following order: Honor-Bilt—McMahon—King—Dougherty. These firms are well known to Mr. Engelhardt of Sealy at Reading, who could be helpful toward this franchise.

C. South Atlantic Seaboard States.

1. Atlanta: Zimmerman Mfg. Co. would be logical Sealy Licensee. Territory embraces bulk of Georgia with a strip of western So. Carolina. Population approximately two million. Minimum $250.00 per month. Maximum $400.00 based on sales. Mr. Lawrence Zimmerman is immediately interested and should be a member of Sealy before November 1st. I know of no other suitable prospect for Sealy in Georgia area.

2. Johnson City, Tenn. Territory includes Northeastern Tenn. Western No. Carolina southwestern section of Virginia and southern West Virginia (south of Charleston) and southeastern Kentucky. Population approximately 1½ million. Minimum $150.00 per month. Probable maximum $250.00 month based on sales. Mr. J. R. Haas can close this Sealy contract any time he so desires. The owner of the Johnson City Mattress Co., and his wife operate the business and have represented U. S. Bedding Co., Memphis as jobbers of springs, studio couches and sofa beds.

3. Charlotte, No. Carolina: Territory embraces the bulk of North and South Carolina. Population approximately four million. Minimum $250.00. Probable maximum based on sales $500.00. The logical representative is Carolina Bedding Co., Charlotte N. C. Georgraphically situated in the heart of the Carolinas. The plant is modern, the finances are reasonable. The owner of this concern, Mr. Allen is highly experienced and a life long friend of Wallace Bowersox and he can close this deal for Sealy in my opinion.

4. Virginia: Territory embraced the state of Virginia with exception of the northern counties adjacent to Maryland and the southwest corner of Virginia west of Lynchburg. Population two million. Minimum $200.00. Probable maximum based on sales $400.00. The most likely concerns are the Dixie Mattress Co. of Richmond and Paramount Bedding Co. of Norfolk. Dixie of Richmond is probably the best prospect based on their reputation and resources and experience. They enjoy the best business in the area today. The owners are the Sutherland Bros. Years ago they were members of Sealy and as such equipped and experienced in the production of Sealy tuftless mattresses. They could be closed, in writers opinion, by November 1st.

D. Dominion of Canada.

[fol. 446E] In addition to the four areas which should be promptly developed and steadily developed for the next 12 months until each open territory is closed, intensive merchandising by Sealy should follow franchise promotion at each point. Without merchandising the minimums will prove hardships to the new members. With merchandising assistance from Sealy the estimated maximums will develop for Sealy. In other words a dollar invested by Sealy in merchandising will yield $5.00 in revenue, based upon the past experience of the writer.

In handling the future of Sealy some consideration should be given to the Southwest where Sealy plants should function at Oklahoma City, El Paso and Phoenix, in addition to our present operations out of Dallas and Houston.

There should be a Sealy licensee in Mexico City and Mr. Edwards of Houston can and would, upon request, establish same. A reduced minimum because of Spanish language is essential.

From all of the foregoing, 35 to 40 Sealy plants should result. Revenue to Sealy should build to $250,000.00 per year, assuming reasonable revenue from present members.

Respectfully submitted, John M. Brody, Jr.

[fol. 447E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 113

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

Memphis 2, Tennessee

August 24, 1943

Mr. W. J. Craig
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Craig:

We are herewith enclosing the Sealy Inc., territorial breakdown as of August 20th. Mr. Haas said that for you to please check this immediately to see if it was correct and if so to please register it as of August 20th in your books. If by chance it is not correct to please advise him accordingly as soon as possible.

Thanking you, remain,

Sincerely, F. Irwin, Sealy, Inc.

Fl'

Chicago: Ill. to Memphis; Ind. from Cinn.
Denver: No. S. Dakota.

[fol. 448E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 123

August 20, 1943

Memphis Territory

Alabama

Entire State

Florida

Entire State

Mississippi

Entire State

Louisiana

Entire State

Arkansas

Entire State

Tennessee

Entire State less following counties to Bluefield's Territory:

Sullivan Carter Johnson Unicoi
Washington (South to Johnson City)

Georgia

Whitfield	Floyd	Walker
Dode	Troup	Chattooga
Catoosa	Muscogee	

Indiana

Vanderburg	Floyd	Clark

Kentucky

Entire state less following counties to Cincinnati Territory:

Rowan
Johnson
Kenton
Gallantin
Pendleton
Menifee
Mason
Lewis
Boyd
Wolfe
Morgan
Owen
Nicholas
Magnoffin
Lawrence
Boone
Campbell
Grant
Brackin
Robertson
Fleming
Greenup
Carter
Elliott
Carroll
Harrison
Bath
Whitley

[fol. 449E]

(Revised October 5, 1943).

Kentucky

Martin
Letcher
Breathitt
Leslie
Whitley
Floyd
Knott
Perry
Clay
Pike
Knox
Harlan
Bell

Missouri

Clarke
Adair
Marion
Randolph
Pike
Andrian
Cole
Franklin
St. Louis
Peniscot
Meries
Texas
Shannon
Washington
Carter
Wayne
St. Genevieve
Cape Girardeau
Stoddard
Scotland
Knox
Shelby
Monroe
Lincoln
Calloway
Osage
Warren
St. Louis City
Jefferson
Pulaski
Howell
Dent
Iron
Ripley
Madison
Perry
Scott
Dunklin
Schuyler
Lewis
Macon
Ralls
Montgomery
Beane
Gasconade
St. Charles
New Madrid
Miller
Phelps
Oregon
Crawford
Reynolds
Butler
St. Francois
Bellinger
Mississippi

Illinois

Clarke	Crawford	Jasper
Wabash	Cumberland	White
Richland	Edwards	Pope
Gallatine	Hardin	Wayne
Saline	Hamilton	Clinton
Clay	St. Clair	Effingham
Madison	Christian	Marion
Shelby	Fayette	Williamson
Jefferson	Franklin	Pulaski
Johnson	Mossac	Jackson
Alexander	Union	Monroe
Perry	Randolph	Montgomery
Washington	Bend Mo	Morgan
Sangamon	Masoupin	Greene
Scott	Pike	Menard
Jersey	Calhoun	Mason
Adams	Schuyler	Moultrie
Coles	Logan	Edgar
Cass	Hancock	
Brown	Lawrence	

[fol. 450E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 133

August 20, 1943.

Territory Kansas City

Sealy Mattress Co., 501 Santa Fe Kansas City, Mo.

The entire State of Kansas

The following counties in the State of Missouri:

Atchison	Cedar	Howard
Worth	Dallas	Pettis
Mercer	Wright	Case
Sullivan	Greene	Henry
Davies	Jasper	Morgan
DeKalb	McDonald	Camden
Andrew	Stone	St. Clair
Clinton	Ozark	Barton
Livington	Douglas	Polk
Charlton	Harrison	LaClede
Ray	Putnam	Webster
Jackson	Grundy	Lawrence
Saline	Gentry	Newton
Cooper	Holt	Barry
Johnson	Platte	Christian
Bates	Caldwell	Taney
Benton	Linn	Nodaway
Moniteau	Carroll	Dade
Hickory	Clay	
Vernon	Lafayette	

The following counties in the State of Iowa:

Montgomery	Appanolose	Wayne
Taylor	Page	

[fol. 451E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 143

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

Memphis 2, Tennessee

October 4, 1943.

Mr. W. J. Craig
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Craig:

Please refer to your letter of August 27th relative to the Sealy territories.

In checking over some of these today I found where I had made an error in the Memphis territory. I did not add the counties Mr. Kaplan released to us as per his letter to Mr. Haas of July 15th. The counties he mentioned in his letter were as follows:

Adams	Cass	Coles
Hancock	Menerd	Clark
Mason	Logan	Schuyler
Brown	Moultrie	Edgar

Would appreciate your checking this against your records also and see if by chance there are some other counties I have missed. When I look at the map and check on it, looks as though there should be others in our territory, but have failed to find and correspondence pertaining to them.

Thanking you and appreciating your cooperation, I remain,

Sincerely, Francis Irwin, Sealy, Inc.

FI'

[fol. 452E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 147

October 11, 1943.

Dear Miss Irwin:

In checking up further on our list of Sealy territories I find that we have evidently omitted the counties in West Virginia that are allotted to Bluefield.

According to my records, and I want to say that they are definitely unofficial, the following counties should be in Bluefield territory:

West Virginia:

Pocohontas	Summers	Boone
Nicholas	Raleigh	Logan
Greenbrier	Mercer	Mingo
Fayette	McDowell	Wayne
Monroe	Wyoming	Lincoln

I will be glad to have you check the above with the contract and advise me if this agrees.

Your truly, Sealy Incorporated, W. J. Craig.

[fol. 453E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 148

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

1047 Florida St.
Memphis 2, Tenn.
May 8, 1944

Mr. John M. Brody, Jr.
% Sealy, Inc.
Columbia, S. C.

Dear Mr. Brody;

I have previously requested that you break down and give to me the Buffalo area. Up to the present time I haven't had it. Kindly upon receipt of this letter sit down and list the counties that go to Buffalo territory. Kindly do this immediately and without delay as I want to settle the matter one way or the other with Pittsburgh. I want to write them exactly what I am willing to do.

Kind regards, Sealy, Inc.

JEH:op

[fol. 454E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 149

SEALY COMPANY OF THE SOUTHEAST

Inter-Factory Correspondence

Date: May 16, 1944.
By: ——, ——.

To: Mr. John Brody
From: J. R. Haas
Subject: —

Mr. John Brody, Jr.
% Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

Dear Mr. Brody:

I am still waiting for the break-down of the Buffalo territory.

In view of the fact that I want this information on file in Memphis, I would like a breakdown of all unsold territory. Let's line out the territories as to what they consist of, get them in shape, and while you are in Chicago, this is the time to do it. Please let me have this promptly because I want to handle the matter with Bob Culp so far as Buffalo is concerned. I have asked for this information at our last meeting; I asked for it at the previous meeting, and I insist that I get this information without any further delay.

Sincerely, Sealy, Inc., J. R. H.

JRH:op

[fol. 455E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 150

May 17, 1944.

Dear Mr. Haas:

Subject—Buffalo, New York Sealy territory

You wrote me while on my last trip for an outline by counties of the Buffalo Sealy territory. I wanted to recheck the old contracts and maps at headquarters so as to forward this information accurately, to you for your purposes. The territory follows along with the population statistics. The population data is ten years old and there has been, naturally, considerable increase in population in every county of western New York, but at least this data shows you the territory assigned by Sealy originally to the Otis Buffalo Company of Buffalo, New York when they were under contract to Sealy. At that time eastern New York was under contract to Hasselbarth of Albany and both of those manufacturers agreed on the boundary line of their territories in central New York. Incidentally, Spring-Aire divided up-state New York on the same basis for their licensees.

Counties	Population By Thousands
Chautauqua	126
Cattaraugus	72
Erie	782
Niagara	149
Orleans	29
Monroe	424
Genessee	44
Wyoming	29
Livingston	38
Allegany	38
Steuben	83
Chemung	75
Schuyler	13
Seneca	25

Counties	Population By Thousands
Yates	17
Ontario	54
Wayne	50
The following counties in Pennsylvania	
McKean	55
Potter	17
Tioga	32
Bradford	49
Total	2181

[fol. 456E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 152

SEALY INCORPORATED

"Bringing Better Sleep To Millions of Homes"

Memphis 2, Tennessee

February 26, 1945.

Mr. John M. Brody, Jr.
Lexington Hotel
New York, N. Y.

Dear Mr. Brody:

In checking over the Contract for Sealy of Allston, I note that according to our records there has been an addition to their territory since their contract was written. Below I am listing the territory as we have it and would appreciate your checking over it and see if it isn't correct.

Maine

Entire State

New Hampshire

The following counties

Rockingham	Hillsboro	Carroll
Strafford	Belknap	Merrimack

Massachusetts

The following counties and cities of Mass.

Essex County Suffolk County

The following cities in Middlesex County.

Melrose	Burlington	Malden
Newton	Watertown	Lexington
Everetts	Belmont	Stoneham
Somerville	Arlington	Cambridge
Woburn	Winchester	Waverly
Reading	Wakefield	
Medford	Waltham	

In Plymouth County—the cities of Hingham & Hingham Center Only. The following cities in Norfolk County:

Wellesley	Vaintree	E. N. & Son
Mattapan	Weymouth	Quincy
Milton & E. Milton	Needham	

Plus unlisted intermediate towns, villages and rural areas within a fifteen (15) mile radius of Boston proper.

Then in 1944 there was an addition made for Norfolk County in its Entirety. Also City of Quincy.

Also, will you please advise if $350.00 isn't correct for the Royalty minimum.

Would appreciate your advising us by return mail the above so that we may complete their contract.

Sincerely, Frances Irwin

[fol. 457E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 153

1047 Florida St.
Memphis 2, Tenn.
March 1, 1945

Mr. John M. Brody, Jr.
c/o Lexington Hotel
New York, New York

Dear Mr. Brody:

I have your telegram in reference to Allston. Your telegram puts an entirely different face on the whole contract.

Allston originally had the entire state of Maine. However, so far as New Hampshire was concerned, they only had six counties and only had certain cities in Middlesex County in Massachusetts.

According to the new handling, you propose to give them four entire counties in Masachusetts, which is okeh, but you now have the entire state of New Hampshire included whereas we only had six counties in New Hampshire. You now propose to include the entire state of Vermont. That may be entirely correct but I am wondering if we shouldn't have an increase in minimum out and beyond what we agreed to with Mr. Weiner or should we stand at the $350 and include the state of Vermont.

You remember you were holding Vermont for Albany or some point along there to make a contract in that area but you seem to have given up hopes of any results in this particular state.

We work states and have given them up. While no one likes to give them up, yet that sometimes happens.

I am wondering if we should give Vermont on the basis that you indicate, that is, on a three year contract, if we should do it without any additional compensation.

Please let me hear from you fully before I send on the contract to Mr. Weiner.

For your information, I have checked the Milwaukee area,

who comes in for a new contract and I checked it for the old territory. It actually figures according to the same basis that the other old members are paying, a matter of $550 so I have set the minimum at $500. Chicago figured around $890 and I have set the minimum at $800. I think both of these concerns are now old enough to bear their fair share of minimum allocations, particularly in view of the fact [fol. 458E] that these minimums are averaged by the year and on the fall.

Kind regards, Sealy, Inc. J. R. Haas

JRH :mbs

[fol. 459E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 155

July 13, 1945

Mr. R. G. Culp
Sealy Mattress Company
1800 Liverpool St.,
Pittsburgh, Penna.

Dear Bob:

Pursuant with request of yourself and W. W. Llewellyn, the writer has prepared for the signature of yourself, standard Sealy contracts in triplicate covering the now open Philadelphia territory.

With reference to the territory, you will note from the contract that said territory is absolutely identical with the territory originally assigned by Sealy to the Philadelphia plant of Sealy when same was operated by the Ingraham Manufacturing Co., under the management of Mr. Llewellyn. The only change from that date to this date is that represented by 2 counties in New Jersey, namely Merser and Ocean counties which were originally assigned to the Philadelphia plant and were subsequently assigned to Sealy Plant in Passaic, New Jersey, who now function Sealy in these two counties. With reference to the dividing line through the heart of Bucks, Montgomery and Chester counties in Pennsylvania, please be advised that said dividing line was drawn by Sealy Inc., after mutual agreement between Mr. Llewellyn of Sealy at Philadelphia and Mr. Gring of Sealy at Reading. The bulk of these 3 counties so far as population is concerned is closer to Philadelphia while the balance of same were closer to Reading and better served by Reading. This for your information and you may feel sure that Mr. Llewellyn fully understands the details of these boundary lines.

You will note that the minimum for the first twelve months following effective date of contract aggregates $3,000.00 as the agreed upon minimum purchase of Sealy labels. You will further note that the second and subsequent years covered by agreement involved royalty to Sealy of $400.00 per month or 3% of sales whichever proves

to be the greater sum of money earned by Sealy on our standard royalty basis.

You will note that the effective date as per agreement shall be December 1st, 1945 but it is understood that in the event you are able and desirous of starting your business in the Philadelphia territory prior to that date, you may do so upon permission by letter from Mr. J. R. Haas. By the same token should conditions make it impossible for you to go forward December 1st of this year as agreed, then by [fol. 460E] special letter from Mr. Haas the effective date could be deferred on the basis of subsequent negotiations between yourself and Mr. Haas. All of this is exactly in line with your wishes and plans for handling of the proposition when feasible.

I am asked to call to your particular attention the fact that as you well know, we are establishing a plant in Gary, Indiana, Posture Products Inc., for the production of innersprings for the various Sealy Plants. The only way we can acquire the necessary monies for this plant, machinery and its operation is through the medium of each new licensee of Sealy subscribing to $3,000.00 of preferred stock in Posture Products and if desired, 30 shares of common stock. The preferred stock is for sale at $100.00 per share, and the common stock at $1.00 per share. It is also understood and agreed that each licensee is to subscribe if necessary for an additional unit of $3,000.00 preferred stock when necessary and upon demand from Posture Products. As you know these monies now being subscribed for Posture Products Inc., are to be used by Posture Products for increased production facilities of that company as necessary for the production and sale of merchandise by them to the various plants of Sealy Inc. We will ask that you confirm in writing your willingness to subscribe to these monies needed by Posture Products for all of the reasons which you are familiar.

The writer wishes to state at this point that he is more than pleased that Sealy in Pittsburgh decided to obtain the license from Sealy Inc., for the Philadelphia territory and that, when you are ready to go forward with the sale of merchandise from this new plant you propose to locate in Philadelphia, I shall do all in my power to assist you fully towards your goal in making this enterprise highly

successful and profitable in its operations. I have every reason to be confident that you will be successful beyond your hopes as a result of this new enterprize. After all, it is simply a logical expansion of your Sealy operation in Pittsburgh territory.

Please convey my kindest regards to Mr. Llewellyn, to my other friends in Pittsburgh and in particular, to Mrs. Culp and yourself.

Awaiting your response to this letter along with the signed contracts in order to bring these negotiations to a close, I remain

Sincerely, Sealy, Incorporated, John M. Brody Jr.

JMB:hs

P.S. I will be in the Chicago office next week. Please be sure to affix your Corporate seal to your signature.

[fol. 461E] IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 156

"Sleeping on a Sealy is like Sleeping on a Cloud"

SEALY MATTRESS COMPANY

BLUEFIELD, VIRGINIA
RAILROAD AVENUE
POST OFFICE BOX 432

July 17, 1945
2036-A

Mr. John Brody
c/o Sealy, Inc.
666 Lake Shore Drive
919-920 American Furniture Mart
Chicago, 11, Ill.

Dear John:

I have delayed writing you about the North Carolina territory because of a brain storm which I had but did not mature.

We learned that a mattress plant in Charlotte, North Carolina, was for sale. So Tom and I flew down there Saturday to look the plant over. It sure was a disappointment as it was nothing but a junk pile and the party wanted $12,000.00 for it. Our idea was that if we could buy a plant down there it would be quite possible that we could work a proposition out with you on the state of North Carolina. This though has now blown over so have no other prospects of a plant so guess we will have forget about the matter.

I am very sorry I did not get to see you before I left Chicago. I discussed the territory proposition with Sid Sutherland but frankly must admit I did not accomplish much. He did though promise to check the counties offered and would let me hear from him about it. He also stated he would get in touch with you about it, so suppose he will do this without delay.

John we are still counting on you for the territory in North Carolina as discussed in Chicago. As stated before if you will work this out for us, including Ashville, North

Carolina, we will definitely do a job for Sealy out of a warehouse in Roanoke and Bristol. Up until this time we have had no sales representative on the road but if this deal with you for the extra counties goes through we will definitely start organizing a sales force. We would like very much to have this sales force trained and ready to go by the time materials loosen up, so feel we should get started on these plans as soon as possible.

Therefore, it is very important that we get something settled on this territory soon so we can get to work. Please [fol. 462E] keep in mind we have the smallest territory of any plant in Sealy and I am sure we can do you a real job if you will give us additional territory in which to work. We are counting on you on this matter and am sure you will keep our interest at heart.

Please let us hear from you about this at your earliest convenience.

With kindest personal regards, I am

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

[fol. 463E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 157

"Sleeping on a Sealy is like Sleeping on a Cloud"

SEALY MATTRESS COMPANY
BLUEFIELD, VIRGINIA
RAILROAD AVENUE
TELEPHONE 4621
POST OFFICE BOX 432

File #3071-A
August 6, 1945

Mr. John Brody
c/o Sealy Incorporated
666 Lakeshore Drive
919-920 American Furniture Mart
Chicago 11, Ill.

Dear John:

Within the last few weeks we have contacted several people in regard to a job as salesman for us. We have one or two very nice prospects lined up and must decide between them very soon.

The number of salesmen and the kind of salesmen we get depends a lot on the territory that they will have to work. Therefore, the additional North Carolina territory discussed with you is very important to both us and these prospective salesmen. If possible, please advise the writer by return mail what has been done about our requested North Carolina territory. Any information you can give me about this matter by return mail will certainly be appreciated.

Yours very truly, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:DLC

[fol. 464E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 158

August 13, 1945

Mr. J. L. Metcalfe
Sealy Mattress Co.
Railroad Ave.
Bluefield, Va.

Dear Jack:

On July 17th, you wrote to me with reference to your thought regarding a possible plant at Charlotte, N.C., then for sale, and you advised me that the proposition did not meet with your approval and you abandoned the idea in its entirety after Tom and yourself flew by plane to Charlotte to check the plant.

Further in your letter of that date you again outlined good reasons covering your interest in certain parts of western North Carolina as additional Sealy territory for yourself to operate in the future. You made entirely clear to me when you were in Chicago and again by your letter of the 17th, the fact that it would be appreciated by you if Sealy could work toward this end as quickly as possible in line with your Post War plans for warehouses, radio programs and new salesmen out of Roanoke, Virginia and Bristol, Tenn.

In the interium I have been on vacation and now comes your letter of August 6th asking for information if possible by return mail, in view of the fact you have a couple of nice prospective salesmen lined up with whom you can not close on a definite basis until you know what your ultimate territory will be.

Jack, I can unfortunately repeat what I told you at Chicago and that is that I am not authorized to extend your territory beyond the limitation of the contract without authorization from our President and Board of Dierctors. There is no other way to handle territory problems as I feel sure you must appreciate it. On the other hand, I told you that I felt it might be in the very best interest of Sealy as

well as of your company if western North Carolina could be made available to you without making impossible the handling of the pending Charlotte Sealy franchise. I also told you that I would personally work toward this end if humanly possible. I have arranged to go East and then South on Sealy work and expect to cover Richmond, Charlotte, Atlanta, and Bluefield between September 17th and 30th, or within 30 days approximately from now I shall be in your area and then I will very probably be in position to give you a definite and I hope, satisfactory answer. Please be patient and cooperate along with the writer in the interest of Sealy until then. Will advise date of arrival.

Regards, sincerely,

John M. Brody Jr.

JMB:hs

[fol. 465E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 159

December 5, 1945

Mr. J. L. Metcalfe,
Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Dear Jack:

At your request and upon instructions from Mr. J. R. Haas, we have made a very accurate recapitulation of the over-all territory as proposed for the Bluefield, Virginia Sealy contract. We have covered the situation as it is today and as proposed for the renewal date effective April 1st, 1946.

So far as your present territory is concerned our figures show your Sealy territory in Virginia, West Virginia, Kentucky and Tennessee to include a population of just a little less than 2 million people. This present exact territory would of course all be included in the renewal agreement.

In addition to the previously outlined territory you were granted some time past by special agreement, the right to serve ten counties in the extreme northwestern corner of North Carolina, namely—Stokes, Surrey, Allegany, Ashe, Yadkin, Wilkes, Alexander, Caldwell, Avery and Watauga. These counties in North Carolina have a population of approximately 225,000, and in your new contract, they will of course, be included as a part of your Sealy territory for the duration of your contract with Sealy.

Now, in addition, you have requested other territory in western North Carolina and with the exception of 2 counties requested by you, namely Catawba and Iredell, it is possible for Sealy to include in your contract the balance of the western North Carolina counties requested, namely Rockingham, Burke, MC Dowell, Mitchell, Madison, Buncombe, Haywood, Jackson Swain, Graham Macon, Clay, Cherokee, Transylvania, Henderson, Polk, Rutherford and Yancey. These additional western North Carolina counties have a population of approximately 475,000 persons.

Therefore, in western North Carolina your territory would embrace approximately 700,000 persons, which to-
[fol. 466E] gether with your 2 million population in the Virginias, Kentucky and Tennessee would give you an overall Sealy territory of approximately 2-¾ millions of people to serve. This, in our opinion represents a splendid Sealy territory for your Company.

I, of course, remember quite well that you definitely wanted, in addition to the foregoing, Iredell and Catawba counties, but it is impossible to yield these two counties which adjoin and communicate with Mecklenburg county, North Carolina, of which Charlotte is the county seat. This I discussed with you in Chicago last summer and in absolute fairness to Sealy, our proposed Charlotte concern and to yourself, these counties prove impossible.

Let me assure you that real study was given to this subject by Sealy and we have done all within our power to cooperate with you while at the same time we have safe guarded the best interests of Sealy, Inc.

If the foregoing is exactly in accord with your understanding of our agreement, then please acknowledge this letter promptly, and upon receipt of your further advices, we will ask Mr. J. R. Haas to incorporate the additional territory by special letter covering your rights between now and April 1st, and then at April 1st, the renewal contract will embrace this temporary arrangements.

Kindest personal regards,

Sincerely yours, Sealy, Incorporated, John M. Brody Jr.

JMB:hs

cc. Mr. J. R. Haas

Counties in No. Car.

Rockingham	51M	Stokes	20M
Burke	29	Surrey	40
McDowell	20	Alleghaney	7
Mitchell	14	Ashe	21
Madison	20	Yadkin	18
Buncombe	98	Wilkes	36
Haywood	28	Alexander	12
Jackson	18	Caldwell	28
Swain	12	Avery	12
Graham	6	Wautauga	15
Clay	5	Mason	14
Transylvania	10	Cherokee	16
Polk	10	Henderson	23
Yancey	14	Rutherford	40

[fol. 467E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 160

January 30, 1948

Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

This will confirm the action of the Executive Committee in assigning to you certain counties in North Carolina to be serviced with Sealy products from your plant on a temporary basis.

These counties—are as follows: Persons, Granville, Orange, Durham, Franklin, Wake, Chetham, Lee, Johnston, Wilson, Wayne, Greene, Barnett, Cumberland, Sampson, Duplin, Lenoir, Craven, Jones, Bladen, Pendar, Onslow, Carteret, Columbus, Brunswick, and New Hanover. This gives you quite a bit of additional territory to cover, and it may be necessary that you establish a warehouse at Durham to properly serve this trading area.

With best regards,

Yours very truly, Sealy, Incorporated.

JMLawrence/b

cc—E. E. Bergmann, W. J. Craig

[fol. 468E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 161

January 30, 1948

Sealy Mattress Company
P. O. Box 350
East Point, Georgia

Attn: Mr. Lawrence Zimmerman

Dear Lawrence:

This will confirm the action of the Executive Committee in assigning certain counties in North Carolina and South Carolina to you on a temporary basis for the service of Sealy merchandise.

The counties in North Carolina are as follows: Cleveland, Gadsden, Macklenburg, Cabarrus, Union, Stanly, Anson, Montgomery, Richmond, Moore, Hoke, Scotland, and Roberson. In addition to the counties stated above, you are also assigned the northern half of South Carolina which consists of the counties not already included in your Sealy contract. This means you will be covering the entire state of South Carolina in addition to the counties outlined in North Carolina.

As I understand it, you are making arrangements to serve the town of Charleston, South Carolina, under a distributor and will also place a warehouse in Charlotte, North Carolina, just as soon as you can make your arrangements.

With best regards,

Yours very truly, Sealy, Incorporated.

JMLawrence/b

cc—E. E. Bergmann, W. J. Craig

[fol. 469E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 162

January 30, 1948.

Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

Attn: Mr. Morris A. Kaplan

Dear Morry:

I think I have written you this information once before, but rather than look into the files of last year and consume a couple of hours of time I will write it to you again.

This is your permission to work the open territory of North Dakota, Minnesota, and that portion of Wisconsin that is not included in your Milwaukee contract on a temporary basis as Sealy territory to be supplied by your plant. I know you understand that as soon as we are able to get a licensee in this area this permission will be withdrawn, however, you will be given full notice of any change.

Yours very truly, Sealy, Incorporated.

JRLawrence/b

cc—E. H. Bergmann
Mr. W. J. Craig, Chicago

[fol. 470E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 163

March 4, 1948

Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

As I wrote you several days back, the matter of your plant serving the Washington, D. C., territory was discussed at the Executive meeting, and I have been asked to give you a resume of their decision.

It was suggested that you continue to serve the Washington, D. C., territory temporarily so that you can ascertain for yourself whether or not you are in a position to properly serve this territory as well as the one you are now serving. Sealy has gone on record that they will not seek a Washington licensee or a licensee to cover the Washington area during the next year or two years while you are surveying or servicing this area. The committee feels that you should have a fair amount of time to work out the problem of sales and service to this particular area, and they will seek a further report before definitely adding this territory to your Richmond contract. They realize that it will possibly require a larger plant or additional plant facilities to that which you now operate and that you will have some sales surveying and work to do before you know definitely that you are able to handle this business. Personally, I believe you can, but it will require planning and real work.

While they did not specifically discuss the additional counties in Virginia that you should work in correlation with the Washington, D. C., territory, I am of the opinion that the following counties should be included in your activities: Shenandoah, Warren, Fauquier, Prince William, Page, Rappahannock, Fairfax, and Arlington.

The counties of Frederick, Clark, and Loudoun would

possibly remain open for inclusion with the Baltimore area. Of course, until such time as we have a representative in Baltimore you may continue to serve any of the Baltimore [fol. 471E] territory you should desire.

If you have any questions or need information which I have inadvertently omitted, please do not hesitate to write to me. I am happy to note the Committee's action, and feel sure that if you do a good job in that area (and I believe you are capable of doing this) the Committee will not hesitate to add this area to your regular Richmond contract.

With kindest personal regards.

Yours very truly, Sealy, Incorporated.

JRLawrence/b

cc—E. H. Bergmann

[fol. 472E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 164

April 26, 1948

Sealy Mattress Company
2363 Larimer Street
Denver 2, Colorado

Attn: Mr. Morris Stein

Dear Morris:—

I would like to ask you a very candid question. "Where in the hell have you been for the last ten or twelve years?" Like Rip Van Winkle, it seems you suddenly woke up because business is a little slow and decided that you had a contract right to service the state of Arizona. For the past ten or twelve years, Sealy of California has been shipping and servicing and building Sealy sales for the state of Arizona.

You have been aware these many years that Sealy of California has been doing this, as we have been in a better position to service this state; and because you made statements to the effect that even though you had the contract you didn't want any part of it. As a matter of fact, if you recall at the last Sealy meeting at which you were present, the matter of new franchise holders of Sealy was discussed, and it was decided that none were needed at the time. Mr. Jake Haas then asked me as the representative from Sealy of California if we were servicing the state of Arizona. Since my answer was in the affirmative, he pointed out that there was no need for any additional franchise holders for Arizona as long as California could and did service this state for Sealy. He said that there was no need for cluttering up Sealy with small franchise holders when existing franchise holders were adequately servicing a territory. You may recall all of this being discussed in open meeting last November. The floor was yours and you made no comment. Naturally we assumed that a history of ten or twelve years would not be changed because of a whim or a temporary lull in business by a franchise holder such as yourself.

Mr. Creelman's telephone call to me was quite disturbing and quite a surprise. Our many years of effort in developing Arizona for Sealy seems now in jeopardy because of an [fol. 473E] unauthorized sales organization creating confusion and doubt in the minds of the Arizona dealers. If you care to have this matter opened up again before the Board of Directors, you certainly have the right to do so. However, until such time as you do exercise your prerogative I request your recalling Mr. Lutz of the Diamond Sales Organization from any further calling on our Arizona accounts. This is for the best interests of Sealy—and a protection for the long years of work and service which Sealy of California has put into this state.

You have been present at our local market when Arizona accounts have called, and at no time have you broached a question of your exercising any rights which you felt you had to Arizona. I certainly would have appreciated hearing from you on this matter before you took the liberty of sending any of your representatives into the state of Arizona. Some damage of course has already been done by your lack of foresight, and there is no sense in crying over spilled milk.

If you need business, why don't you work your Utah territory, as we get many requests from there for merchandise.

Please may I hear from you on this aggravating problem.

Personal regards.

Yours very truly, Sealy Mattress Company of Southern California (Joe Willens)

JJW:ga

[fol. 474E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 165

May 1, 1948

Sealy Mattress Company
5810 South Normandie
Los Angeles 44, California

Attn: Mr. Joe Willens

Dear Joe:

I have your ultimatum of the 26th to keep out of our Arizona territory. Of course, if I did not know you so well I might have felt inclined to be hurt.

Perhaps you are not acquainted with the real facts about the Arizona territory, how it came about in getting our permission to solicit Sealy business in and around Phoenix and Tucson territory which I am sure my very good friend Seniel will agree with me that it was a temporary arrangement.

True enough you have worked this territory for several years now, but that does not mean that we are ready to forfeit our rights and owner-ship of the Arizona territory. For your information Joe the only reason that I granted the privilege to Seniel to work that part of the Arizona territory was entirely out of friendship for Seniel, as no other person that I know of could have had this consideration. Furthermore I wish to put you straight and clear on the understanding we had how the territory was to be worked, namely Phoenix and Tucson and immediate territory, was to be covered by your representatives, but we were free to cover towns close to the New Mexico border. As a matter of fact we have shipped some Sealy merchandise into some of the Arizona towns whenever we had any available.

In view of the above circumstances I am sure you will appreciate our position in the matter and approach the situation with an open mind.

I will not take up time in discussing the things that were said at our Sealy meetings about the Arizona territory, for that would not have any bearing on the fact that we do

own the Arizona territory, and it should be left for our own handling.

I am willing to go along with you and let you work Phoenix and Tucson and immediate territory as you have in the past until such a time when other arrangements can be made. I have in mind that there might be some possibility of working out something with Seniel at our next meet-[fol. 475E] ing, on the basis of some consideration for that particular territory. We, of course, shall remain free to work some of the towns in Arizona which lie closer to the New Mexico border.

This will, of course, depend entirely on your attitude in the matter. You will have to quit picking on me, for this deal will be predicated entirely on friendship.

Judging from the U. J. A. news of the liberal contribution my friend Seniel made, he must be doing pretty good, more power to him.

With best wishes and kindest personal regards, we are

Sincerely yours, Sealy Mattress Company, (Morris).

MS/cms

[fol. 476E] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 166

May 4, 1948.

Sealy Mattress Company
2363 Larimer Street
Denver, Colorado

Attn: Mr. Morris Stein

Dear Morris:—

I have read your letter of May 1st very carefully, and I can't help but feel that you are acting very childish in this matter. You know as well as I that the Arizona territory is in my contract, and we also know that through an error on Sealy, Incorporated's part it was not taken out of yours. To my knowledge there was never any discussion about it being on a temporary basis. We both know that you gave up other territory to Sealy which is now being worked by other franchise holders. On the same basis as you mention in your letter now, you will probably lay claim to the title of the other territories that you gave up to Sealy.

As regards to your question about being able to work out some consideration for the territory, I am sorry to say that I think it is just a little late to begin to think about getting paid for something that was given to me many, many years ago. My liberal donation to the U. J. A. should not influence you one way or the other as regards this other situation.

Since I am not on the Board, I probably will not attend the next Sealy meeting. I am willing however to leave it up to the Board or the Executive Committee, and I feel sure that Joe is capable of handling my interests.

Kindest regards, Sealy Mattress Company of Southern California, Seniel Ostrow.

SO:ga

[fol. 477E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 167

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Los Angeles 44, California.
Telephone: PLeasant 2-3773.
5810 South Normandie Avenue

May 4, 1948.

Sealy Mattress Company
2841 East 37th Street
Cleveland 15, Ohio

Attn: Mr. E. H. Bergmann

Dear Earl:

A deplorable situation now exists between Sealy of Denver and Sealy of California, brought on by Morris Stein's utter disregard toward contractual obligations. For the past ten or twelve years Sealy of California has been servicing the state of Arizona and Nevada under its franchise rights .... and with a clear understanding with Sealy of Denver. Sealy of California's franchise rights have never been questioned, and as a matter of fact, were amplified at the last Board of Directors meeting when Jake Haas asked me, as a representative of California, whether we felt a new franchise holder was necessary for this territory, or whether we were adequately servicing this territory. My statement that Sealy of California was adequately servicing this territory was accepted and it was then determined that Sealy, Incorporated did not need an additional franchise holder for Arizona and Nevada.

Now, with this history, Morris Stein has been sending his sales representative into Arizona and now lays false claim to this territory. Actually, Denver cannot service this territory properly because—first, of the freight differentials which exist between Denver and California, and sec-

ond—and most important of all—when business is normal he can't even adequately service his Utah territory.

Mr. Ostrow's contract contains Arizona, and through an over-sight on the part of Sealy, Incorporated at that time Arizona was not deleted from the contract which Denver had.

Enclosed are copies of letters exchanged between Denver and California. It appears from Morris Stein's answer to my letter that it will be up to the Executive Board or Board of Directors to adjudicate and protect Sealy of California's franchise rights for the Arizona and Nevada territories.

We leave this matter in your capable hands.

Kindest regards, Joe Willens.

JJW:ga

[fol. 478E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 167-A

2841 East 37th St.
Cleveland 15, Ohio
May 11, 1948

Sealy Mattress Company
2363 Larimer St.
Denver, Colorado

Attention: Mr. Morris Stein

Sealy Mattress Company
5810 South Normandie Ave.
Los Angeles 44, California

Attention: Mr. Joe Willens

Dear Morris:
Dear Joe:

The matter of confliction in the Arizona territory has finally come to the attention of the unfortunate president of Sealy, Inc. and this letter is written to both parties with the thought in mind of trying to bring this thing to an amiable conclusion without the necessity of action on the part of either the Committee or the Board.

I have known for a number of years that there was some misunderstanding relative to the State of Arizona. I have heard Morris and Seniel wisecrack back and forth for a period of at least ten years about this matter, and while Mr. Haas was president, I, personally, did not take too much interest in what apparently was a difference of opinion. Now, of course, it has come to a head and I would like to get it cleaned up.

It has always been my firm conviction that a reasonable man can solve a reasonable problem and I do not see anything unreasonable about this matter.

I think the proper approach to this matter would be for each of you to sit down and compile a history of the business that you have conducted in Arizona by years and an

outline of the exact territories that you have been servicing. With this information at hand, I believe that the three people, namely the two Sealy licensees and the arbitrator, who can be either the president or legal counsel of Sealy, should be able to come quickly to some amiable handling. Let's approach it with an open mind in that manner.

Please advise me.

[fol. 479E] Sealy Mattress Co., Denver, Colorado.
Sealy Mattress Co., Los Angeles 44, California.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:BR

CC: Executive Committee: Morris A. Kaplan, Harry B. Fouts, Louis Haas, William Ockrant.

CC: Mr. J. R. Lawrence.

[fol. 480E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 167-B

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Denver, Colorado.
Telephone Tabor 4267.
2363 Larimer Street.

May 17, 1948.

Sealy Incorporated
2841 East 37th Street
Cleveland 15, Ohio

Attention: Mr. E. H. Bergmann

Dear Earl:

I have your letter of May 11th in regard to the controversy between Seniel and myself relating to the Arizona territory.

I am sorry to cause you all of this trouble, for I appreciate the fact that you have enough problems running the affairs of Sealy Incorporated without being bothered with additional matters of this type.

Seniel claims that he has Arizona in his contract, but we have had it long before and have never relinquished this territory to Sealy Incorporated or California. I have had some correspondence with both Seniel and Joe Willens, but I didn't get anywhere with them. They insist that the Arizona territory is theirs and will not listen to reason. In view of their attitude it would be best to bring this matter up before the executive board for handling at our next meeting.

With kindest regards, we are

Sincerely yours, Sealy Mattress Company, Morris.

MS/cms

[fol. 481E] In United States District Court

Government's Exhibit No. 168

Sealy Incorporated

Inter Factory Correspondence

To: Mr. J. R. Lawrence

Date: May 18, 1948.
From: E. H. Bergmann.
Subject: —

Roger, you have the original contracts at Memphis for Denver and Los Angeles.

Please get these out and ascertain as to whether or not Arizona appears in both contracts and tell me the dates of the contracts so that I will know as to which contract contains the question of territory first.

Very truly yours, E. H. Bergmann.

EHB:RR

CC: Sealy Mattress Co., Denver, Colorado.

CC: Sealy Mattress Co., Los Angeles, Calif.

[fol. 482E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 169

SEALY "TUFTLESS" INCORPORATED

"Sleeping on a Sealy is like sleeping on a cloud"

666 Lake Shore Drive Chicago 11, Illinois

May 24, 1948

Mr. E. H. Bergmann
% Sealy, Incorporated
2841 East 37th Street
Cleveland 15, Ohio

Dear Earl:

This seems like a rather silly thing, but I can't locate the contract of the Sealy Mattress Company of Southern California. It is not in the safety deposit box, and I am not able to find it in the papers in this office. Early last year we sent this contract to Mr. Herbert J. Haas, of Atlanta, and he had it copied. I feel sure he returned it to this office, but I am unable to locate it.

In Mr. Herbert J. Haas' letter of January 4, 1947, he discussed this contract, and noted that the date was September 1, 1946, and that the contract covered the Fresno and Los Angeles territory. This contract in question did not cover the territory of Oakland, which is a separate agreement. Now, I have the contract covering the Oakland territory in the safety deposit box, and if I can't locate the contract in question I will have to get Mr. Herbert Haas to have his office make an extra copy of the one he has.

In Mr. Herbert J. Haas' letter of January 4, 1947, he states that the license contract under Paragraph 11 covers the licensed territory in the states of California, Nevada, and Arizona. I have not been able to locate any amendment wherein any of this territory was released to Sealy or to another plant.

In examining the contract with Denver I note that the contract date was September 12, 1936, and that this contract also has the state of Arizona listed in the territory. If this information is correct, and I presume it is, then the California license predates the Denver license by twelve days, and California has a prior right to the state of Arizona over the rights of Denver.

The above for your information.

Sincerely, Sealy, Incorporated, Roger.

JRLawrence/b

[fol. 483E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 169-A

9/17

No reply.

What have you fellows done regarding this matter. I hope you have had so much business that you have not had time to do anything.

Lets get it cleaned up and behind us before annual meeting on 11/12.

2841 East 37th St.
Cleveland 15, Ohio
July 22, 1948

Mr. Joseph J. Willens
Sealy Mattress Company
5810 S. Normandie Ave.
Los Angeles 44, California

Mr. Morris Stein
Sealy Mattress Company
2563 Larimer St.
Denver, Colorado

Gentlemen:

I hope that by this time you two boys have been able to get your maps out and have decided on the exact line of demarcation of the Arizona territory.

As soon as you have come to a gentlemen's agreement relative to same, will you please advise me, so that we in the national office may prepare a supplement covering same?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:HR

CC: Mr. J. R. Lawrence

[fol. 484E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 179

2841 East 37th St.
Cleveland 15, Ohio
September 20, 1948

Mr. Joseph J. Willens
Sealy Mattress Company
5810 S. Normandie Ave.
Los Angeles 44, California

Mr. Morris Stein
Sealy Mattress Company
2363 Larimer St.
Denver, Colorado

Gentlemen:

I wrote you fellows on July 22 regarding the Arizona territory.

I have not heard from you regarding this matter. I hope that the reason is that you have had so much business that you have not had time to do anything about it.

The annual meeting is coming up in about sixty days. What do you say we get it cleaned up before that time?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:HR

CC: Mr. J. R. Lawrence.

[fol. 485E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 171

2841 East 37th St.
Cleveland 15, Ohio
February 4, 1949

Mr. Joseph J. Willens
Sealy Mattress Company
5810 S. Normandie Ave.

Mr. Morris Stein
Sealy Mattress Company
Los Angeles, California
2363 Larimer St.
Denver, Colorado

Gentlemen:

Bad pennies have a way of coming home, and again I want to inquire of you gentlemen as to what you have done on the definite allocation of the lines dividing the Arizona territory.

This is a matter that should not remain unhandled and I would like to get your two contracts in agreement on this matter.

Please advise me.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:HR

CC: Mr. J. R. Lawrence.

[fol. 486E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 172

April 7, 1949.

Sealy Mattress Company
5810 South Normandie Avenue
Los Angeles, 44, California

Attn: Mr. J. J. Willens

Dear Joe:

While I was in Cleveland on Monday I discussed the Arizona territory situation with Mr. Bergmann, and he turned over to me the letters received from both you and Mr. Stein.

Your letter of March 23 lists certain towns and cities, but does not give a breakdown by counties. I do not have a map of Arizona before me that gives the individual towns, and I am wondering whether or not the division agreed upon between you and Mr. Stein could be by county lines.

If it is possible to divide the state of Arizona by county lines, it would simplify our Sealy records. Whenever we assign a territory or make a division of territory we always follow, as near as possible, county lines. We find it inconvenient to list territories in any units less than a county.

I will appreciate it if you will look this over and write me.

With best regards,

Yours very truly, Sealy, Incorporated.

JRLawrence/b

cc—Mr. E. H. Bergmann

[fol. 487E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 173

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Denver, Colorado
Telephone Tabor 4267
2363 Larimer Street

February 9, 1949.

Mr. E. H. Bergmann,
2841 East 37th St.,
Cleveland 15, Ohio.

Dear Earl:

In regard to your letter of February 4, neither Ostrow nor ourselves have come to any decision as to the territory in Arizona and we are covering a few of the towns and Los Angeles takes care of the biggest part of Arizona.

I hope to come to some agreement on the Arizona territory at some future time, although I want you to know that I consider Arizona our territory. We have it in our Sealy contract.

Sincerely, Morris, Sealy Mattress Company.

ms:ms

[fol. 488E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 173-A

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Los Angeles 44, California
Telephone Pleasant 2-3773
5810 South Normandie Avenue

March 23, 1949.

Sealy Mattress Company
2841 East 37th Street
Cleveland 15, Ohio

Attn: Mr. E. H. Bergmann

Dear Earl:

Your letter of February 4th with reference to allocation of the lines dividing the Arizona territory between the Denver and California franchises, is one which I am sorry I have not answered sooner. You are absolutely right that this matter should not remain unhandled any longer, and since, Morris Stein and ourselves have agreed to the following—and it should be incorporated into our contract. California is servicing and shipping regularly the following cities and towns: Glendale, Phoenix, Mesa, Tucson, Casa Grande, Yuma, and Nogales.

We have agreed that Mr. Stein's representative service the north-central and extreme southern part of Arizona, which includes the following: Prescott, Winslow, Holbrook, Kingman, Flagstaff, Cottonwood, Safford, Globe and Miami.

The above outlined territory has been agreed upon by the Denver plant and ourselves. This should take care of the allocation of the Arizona territory between Denver and ourselves.

Kindest regards, Sealy Mattress Company of Southern California, Joe Willens.

JJW/ga

[fol. 489E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 174

Dictated March 28, 1949.
March 29, 1949.

Sealy Mattress Company
5810 South Normandie Avenue
Los Angeles, California

Attn: Mr. J. Willens

Dear Joe:

I want to acknowledge receipt of your letter of March 23rd, in which you outline the territory which is going to be serviced by Los Angeles and also the territory which will be serviced by Mr. Morris Stein, representing your agreeable division of the state of Arizona.

This information is going to be forwarded on to the attention of Mr. Roger Lawrence and I will have him draw up a letter of stipulation which will be sent to you and to Morris Stein for your signatures and, in turn will be signed by me, and will be affirmed to the contracts.

Thank you very much for the excellent attitude on the part of both you and Morris in cleaning up what could be a very nasty situation.

Personal regards.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:r

cc: Lawrence, M. Stein.

[fol. 490E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT NO. 175

May 9, 1949.

Sealy Mattress Company
5810 S. Normandie Avenue
Los Angeles, California

Attn: Mr. J. J. Willens

Dear Joe:

On April 7th I wrote to you regarding the breakdown of the Arizona territory between your plant and the Denver plant. On Friday I had an opportunity to sit down with Mr. Stein and go over this matter thoroughly, and we were able to refer to your letter of March 23rd and work out a division of this territory in regard to counties.

It is proposed that Los Angeles will work the following counties in the state of Arizona: Yuma, Maricopa, Pima, Pinal and Santa Cruz. It is proposed that Denver work the following counties: Mohavi, Coconine, Navaho, Apache, Gila, Yavapai, Graham, Greenlee and Cochise.

If you will be so kind, please refer to your territory maps and let me know immediately whether or not this division is a proper one and whether or not you are in full agreement. If I do not hear from you, I will take it that it meets with your okay.

With best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

cc: Bergmann

[fol. 491E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 176

February 16, 1950.

Mr. Herbert J. Haas
First National Bank Building
Atlanta 3, Georgia

Dear Mr. Herbert:

When Morris Stein and his partner sold out their interest in the Denver plant to the new people we issued a new contract covering the territory we had listed in this office as belonging to the Denver territory. In this listing we included the state of Nevada but, upon receiving the old Denver contract from Morris Stein we note that Nevada was not included in the original Denver territory. There was no intention on the part of this office, nor was there any promise to the new people to franchise to them more territory than was listed in the old Denver contract. The peculiar thing about this is that all of our territory records, maps, etc. (some go back to 1943) list Nevada as being in the Denver territory.

In referring to the contract to Seniel Ostrow, dated September 1, 1936, we find that Nevada is listed in his contract. On the basis of these contracts there is no doubt but that the Nevada territory actually belongs to Seniel Ostrow. If there were any supplementary agreements or changes in the territorial setup, we have not been able to find any record of them.

This whole thing comes up because the Denver plant has gone into the Nevada territory and Seniel Ostrow has called the national office with the request that we chase them out. He states that he has been serving western Nevada for over fifteen years and that it is in his contract. Earl and I have discussed the matter and he is going to write to Denver and tell them that if the state of Nevada is listed in their new contract then, obviously, it was in error as we cannot franchise territory we do not possess.

As you will recall, we found the state of Arizona listed in both the old Denver contract and the contract to Seniel Ostrow. This we were able to work out by an agreement

as to a division of the state for practical service arrangements. There has been no further trouble regarding the Arizona territory.

[fol. 492E] In looking over Seniel Ostrow's contract, dated September 1, 1936, I note that the states of California, Nevada and Arizona are listed. In referring to the contract for the Sealy Mattress Company of Northern California, dated December 15, 1937, and which is ostensibly the Oakland contract, I note the territory listed as follows: All of the state of California included with the following boundary line; Beginning at Fort Rose on the Pacific Ocean, to Lytton to Middletown to Arbuckle to Knights Landing to Woodland to Davis to Rio Vista to Byron to Mountain House to Altamont to Livermore to Hollister to the Pinnacles National Monument to Soledad to Big Spur on the Pacific Ocean and including all of the said towns except Big Spur and Livermore.

This brings up a problem that may arise in the future as again we have territories listed in two separate contracts and there is no record of a modification of the first contract containing the same territory. Earl and I feel that there should be some kind of written agreement regarding the territories listed in the two contracts in California so that the future officials of Sealy would have some guidance in case the problem should ever arise.

If you have any thoughts on the matter or you need any additional information, please communicate with the writer.

Best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 493E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 177

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Los Angeles 44, California
Telephone Pleasant 2-3773
5810 South Normandie Avenue

April 10, 1950

Mr. J. R. Lawrence
Sealy Incorporated
666 N. Lake Shore Dr.
Chicago 11, Illinois

Dear Roger:

In reply to your letter of the seventh regarding the supplementary agreements, these will have to be re-written as they do not apply to the present division of territory.

I am enclosing the map which you will please return, showing a new line running from Lopez point on the Pacific Ocean to King City to Madera to Laws to Goldfield, Nevada, including everything north of this line both in California and Nevada. The cities of Madera and King City are included in the northern territory.

Yours truly, Sealy Mattress Co. of Southern Calif.,
Seniel Ostrow.

SO/rf

[fol. 494E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 178

May 8, 1950.

Mr. Herbert J. Haas
First National Bank Building
Atlanta 3, Georgia

Dear Mr. Herbert:

I sent the supplementary agreements regarding the southern California and northern California territories to Seniel Ostrow for signature. On April 10th Mr. Ostrow wrote me that the line of division between the two territories had been changed and that the new line divides California into north and south as follows.

The northern California area will consist of all territory north of a line running from Lopez Point on the Pacific Ocean to King City to Madera to Laws to Goldfield, Nevada. The cities of Madera and King City are included in the northern territory. Everything south of this line is in the Los Angeles territory.

I wrote to Mr. Ostrow and asked him to return the agreements to me so that I could have them corrected and Joe Willens wrote and told me that the agreements could not be returned inasmuch as Mr. Ostrow discarded them thinking they were of no use.

What this means is that you will have to refer to your copy in your office and make up a new agreement embodying the above change in territory. I did not keep a copy of the agreement in this office so must pass this burden to your secretary.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 495E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 179

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Los Angeles 44, California
Telephone Pleasant 2-3773
5810 South Normandie Avenue

August 18, 1953.

Mr. Earl Bergmann
Sealy Inc.
666 N. Lake Shore Dr.
Chicago, Ill.

Dear Earl:

In answer to bulletin 150 August 3rd, subject directors meeting Sept. 14th to 15th, I would like to submit for discussion on the agenda the servicing of the entire state of Arizona by the California franchise.

I have attempted several times to get Denver to agree to amend our contract to provide for California servicing the entire state of Arizona on a permanent basis, instead of the temporary oral agreement which is now in existence. I would like to discuss this matter with you personally before the meeting to get your ideas on the proper approach during the employers meeting.

Kindest personal regards, J. J. Willens.

JJW/AA

[fol. 496E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 180

Dict. 11/23/53
November 24, 1953.

Mr. Morris Stein
Sealy Mattress Company
2363 Larimer Street
Denver, Colorado

Dear Morris:

It is my understanding that the Denver plant has a verbal understanding with the Los Angeles plant which permits the Los Angeles plant to service the entire State of Arizona.

I would like to reduce this understanding to writing and place it on a permanent basis and make it a part of the respective contracts of Los Angeles and Denver.

Will you please send me your confirmation of this oral agreement so that I may reduce same to writing and have this executed and attached to the two contracts.

Yours very truly, Sealy Incorporated.

E. H. Bergmann.

EHB:hlc

[fol. 497E]

Dict. 9/18/53
September 21, 1953.

To: Messrs J. J. Willens and Ben H. Antonoff

Gentlemen:

It is my understanding that you two gentlemen have a verbal understanding as to the servicing by the California plant located in Los Angeles of the entire State of Arizona.

This writer would like to reduce this understanding to writing and place it on a permanent basis and attach it to the respective contracts of Los Angeles and Denver.

May I have your confirmation of this oral agreement so that I may be reduce same to writing and have same executed prior to the annual meeting.

Yours very truly, Sealy, Incorporated.

E. H. Bergmann.

EHB:hlt

[fol. 498E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 181

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

2363 Larimer Street
Telephone Tabor 4267
Denver 2, Colorado

November 30, 1953.

Mr. E. H. Bergmann
Sealy, Incorporated
666 Lakeshore Drive
Chicago, Illinois

Dear Earl:

I was somewhat surprised to read your letter of November 24 in regard to my understanding with Los Angeles to permit them to service the entire state of Arizona. They have pulled this same stunt on me a couple of years ago, and the results were that I lost more than half of the Arizona territory.

I do not recall that I have offered any Arizona territory to them, and as far as I know, we are not in the mood at the present time to let any of our territories go to anybody. Therefore, will you please inform them to keep their salesmen out of that territory which belongs to us?

This will also acknowledge your Posture Products letter of November 25. I took the matter up with Herman Karlan, and I am sure we can arrange to send you an order for a car for Posture Products springs every other month as suggested in your letter.

Sorry I won't be able to see you at the Kansas City sales meeting, as I have sprained my ankle and my foot is in a cast now, and will be from 2 to 3 weeks.

With kindest personal regards,

Sincerely, Morris, Sealy Mattress Company, Morris Stein.

MS:LS

[fol. 499E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 182

Dict. 12/7/53
December 8, 1953.

Mr. Morris Stein
Sealy Mattress Company
2363 Larimer Street
Denver, Colorado

Dear Morris:

I was very sorry to learn from your brother while I was in Kansas City that you had fallen and sprained your ankle. I hope that your foot will be out of the cast before it is time for the January Market. It just wouldn't seem right for us to go into our new home without the patriarch of Sealy being present.

I want to acknowledge receipt of your letter of November 30th relative to the Arizona territory.

I wrote to both Joe Willens and Ben Antonoff on September 21st relative to the verbal agreement which I understood existed between those two gentlemen and the matter of servicing of the entire State of Arizona. I did not receive a letter from Ben, but I did receive a letter from Joe saying that there was a verbal understanding between them and that he, Joe, would be very much in agreement to the reduction of same to writing.

Since I did not hear from Ben, after the change I wrote to you on November 24th.

I have a feeling, Morris, that the best thing to do with this is to leave sleeping dogs lie. I'll see you soon in Chicago.

Personal regards.

Yours very truly, Sealy, Incorporated.

E. H. Bergmann.

EHB:hlc

[fol. 500E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 183

Dict. 2/4/54
February 5, 1954.

Mr. J. J. Willens
Sealy Mattress Company
5810 S. Normandie Ave.
Los Angeles 44, California

Dear Joe:

I am sorry to advise you that I have been a complete failure in my attempts to reason with Morris Stein on the relinquishment of that portion of the State of Arizona which is in his contract.

I pointed out to him what I thought was a very realistic approach to the subject, but he has turned me down flatly.

It is my understanding that you are planning on coming to the Board meeting in Florida and maybe when the two of you are there completely relaxed you may be able to solve the problem between you because apparently I can accomplish nothing as a moderator.

Personal regards.

Yours very truly, Sealy, Incorporated.

E. H. Bergmann.

EHB:hlc

[fol. 501E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 184

9/7

August 20, 1948

Roger to write re E Com decision & reasons as to temporary territory

Do not touch on his views relating to permanent contract.

Sealy Mattress Company
P. O. Box 432
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

This will acknowledge your letter of August 17 in regard to the new North Carolina territory being serviced by your plant. You state that you do not recall this territory being added to your contract, and this is entirely correct. Permission has been given to your plant by Sealy, Inc., to serve this North Carolina territory on a temporary basis. It was the intention of the Executive Committee that the three plants serve the area surrendered by the Memphis plant on a temporary basis in order that Sealy, Inc., might determine whether or not such an arrangement is satisfactory for the Sealy corporation. I do not know what period of time this territory is to be assigned on a temporary basis, but I do not know it will be not less than a year and probable not more than two years.

I must admit that this does raise problems for the plants taking over the territory. Whether or not the plants hold the territory assigned to them on a temporary basis depends on their sales and service in that area. By the same token, you cannot have a great deal of business unless you will be willing to advertise. I can't blame you for being reluctant about putting your money into a territory that is not on your contract, but this is a gambler's chance that you will have to take.

If I were one of the plant owners making a decision, I

would be inclined to spend money in the territory—possibly allocating a set amount for the area and then trying to hold it to 5% of my sales in that area. If I anticipated that the territory would produce me around $100,000 worth of business in a year, I would set up $5,000 in advertising to get this business rolling. Whether you would spend this on cooperative billboard advertising, newspaper advertising, radio, etc., would be entirely up to your own judgment and survey of the territory. Personally, I would restrict my entire expenditure to a cooperative basis with the dealers. In this way you get two for one and make the dealers happy.

[fol. 502E] If you plan to set up a six month's or year's projected advertising expenditure in this territory, I wish you would advise me so that the Sealy corporation can give you protection on this territory. I don't believe you will be throwing money away even if the territory were not assigned to your contract permanently, for this territory properly handled will pay for itself on a current basis.

With best regards,

Yours very truly, Sealy, Incorporated.

JRLawrence/b

cc—E. H. Bergmann

[fol. 503E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 185

August 25, 1948

Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

Attn; Mr. Morris A. Kaplan

Dear Morry:

Enclosed is the letter I received from Mr. Jack Metcalfe, of the Bluefield, Virginia, plant, in regard to the North Carolina territory that was assigned to him in January, 1948, on a temporary basis.

I am sending you this letter so that you can consider putting it on the agenda of your next Executive Committee meeting. I am of the opinion that the Committee felt these plants should serve this territory for a minimum of one year in order to determine whether or not the division of the territory was for the best interests of Sealy, Inc.

Yours very truly, Sealy, Incorporated.

JRLawrence/b

Encl.

cc—E. H. Bergmann

[fol. 504E] IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 186

September 21, 1948

W. J. Craig
Sanitary Bedding Company
815 Rondo Street
St. Paul 4, Minnesota

Attn: Mr. Ross S. Rosenberg

Dear Mr. Rosenberg:

I am very happy to tell you that the Executive Committee of Sealy, Inc., has accepted your application for a franchise in the Minnesota territory. They are in full agreement of the salient points I outlined to you on my recent visit.

The Committee is in agreement that your contract will start January 1, 1949, on the straight royalty basis, and that the minimum royalty will be $400.00 per month. They will agree to waive the minimum royalty requirements for the first three months in order that you may begin to receive the benefits of the Sealy advertising selling before the minimums become effective. As I told you in St. Paul, and I think you will agree with me, the minimums will not be anything to worry you for your sales will by far outstrip any of the minimums required under the contract.

We are in agreement that you will sit in on the Sealy Licensees' meeting that will be held in Chicago on November 14, provided we have your signed contract prior to that time. We will be willing to sell you five shares of Sealy, Inc., stock at $105.00 per share. The holding of these five shares of stock will enable you to sit in on the annual stockholders meeting.

The contract I discussed with you in St. Paul has been approved with the exception of some minor changes, and as soon as I receive the form back from our attorneys I will send you three copies. All three copies are to be executed and returned to the writer, and upon completion by Sealy, Inc., one copy will be returned to you for your files.

The territory under this franchise will consist of the

entire state of Minnesota, the entire state of North Dakota, the following counties in the state of Wisconsin—Douglas, Washburn, Burnette, Polk, Barron, Dunn, St. Croix, Pierce, Pepin, and Buffalo. You will have the majority of the [fol. 505E] state of South Dakota, but I must call to your attention that there are some counties in this state already franchised to other plants. On the Western end of South Dakota the counties of Harding, Perkins, Butte, Meade; Lawrence, Pennington, Custer, Fall River, Washington, and Shannon are franchised to the Sealy Mattress Company of Denver, Colorado. There is also a strip of counties across the Southern end that are in the Des Moines territory. This boundary line would roughly be across the top of the counties of Minnehaha, McCook, Hanson, Davison, Aurora, Bruele, Cregory, Tripp, Mallette, and Washa baugh. All in all, the territory outlined is quite large and contains quite a large buying power and population. You have a very good balance of country and city accounts, and I personally know there are a great number of dealers in that area very anxious to put in the Sealy line, when facilities are completed for servicing out of St. Paul. You probably have your own sales plan, but it would seem that you would need two men for your country territory—one to work North Dakota, South Dakota, and the Western part of Minnesota—and the other to work in and around the country territory outside of Mineapolis and St. Paul, including the counties along the Western end of Wisconsin. Of course, you will necessarily have to have a full time city salesman to work the accounts in Minneapolis and St. Par' As your volume increases, you may find it necessary to put on additional salesmen.

The Sealy Engineer, Mr. Earl Guckert, will be available during November and December to supervise the new layout of your plant. We will have him in Des Moines around October 15, and if you want Mr. Guckert to prepare a layout diagram for you it may be possible I can get him up there for a short time around the first week in November. As I have already stated to you, the charges for Mr. Guckert's services are $50 a day, which includes all his expenses. We do not like to send him to a place for less than a week, or five days, for his travel expenses are quite heavy. In my opinion, Mr. Guckert's services at $50 is a

tremendous value, for I can tell you confidentially that his salary runs more than that, and Sealy, Inc., each year bears a very heavy proportion of his expense.

This letter is rather lengthy, but before I close I want you to know that Sealy has in the processing of work one of the outstanding promotions on the resale lines of mattresses that has been conceived since the introduction of innerspring construction. Your joining of the Sealy group in January will be most timely, for you will immediately receive the benefits of the planning and work that has gone on for the past several years. You will be able to see the complete line of market samples at the licensees meeting in November, and will be able to become fully familiar with the program of Sealy, Inc., for the next year.

I am very enthusiastic about your possibilities. You have an opportunity that is very seldom as timely as your association with the powerful selling organization of Sealy plants. You will like the people in the organization from the President on down, and will benefit greatly by the association with such astute business men as are associated [fol. 506E] with our group. I feel sure that everyone in the Sealy organization will share the writer's feeling of elation in having you come into the group and that each and everyone will extend you a welcome hand at the November meeting.

With best regards,

Yours very truly, Sealy, Incorporated

JRLawrence/b

cc—Mr. E. H. Bergmann, Mr. H. B. Fouts, Mr. Louis G. Haas, Mr. M. A. Kaplan, Mr. Wm. Ockrent, Mr. W. J. Craig.

[fol. 507E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 188

November 24, 1948.

Air Mail

Sealy Mattress Company
38 Everett Street
Allston, Massachusetts

Attn: Mr. I. A. Wiener

Dear Mr. Wiener:

Mr. Bergmann has authorized the addition of the following counties in the state of Massachusetts to your licensee agreement with Sealy, Inc.: Bristol, Plymouth, Barnstable, Dukes, and Nantucket. In connection with this, you are to write us a letter releasing the state of Vermont from your present license agreement and surrendering this territory back to Sealy, Inc.

As soon as we have your letter releasing the territory of Vermont, Sealy, Inc., will give you a letter officially incorporating the above named counties into your present license agreement.

Please give this your immediate attention as we would like to complete these formalities.

With best wishes,

Yours very truly, Sealy, Incorporated

JRLawrence/b

cc—Mr. E. H. Bergmann

[fol. 508E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 189

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 6-4871
8 South Harvie Street

April 14, 1949.

Mr. Earl Bergmann,
% 2841 E. 37th St.,
Cleveland 15, O.

Dear Earl:

I acknowledge your communication of April 6th along with the new Sealy contract in triplicate.

I have studied the letter and the contract. I realize fully the necessity of Sealy Inc. receiving royalties in order to carry on. I feel that I have not done a bad job with Sealy in my territory but of course there is always room for improvement.

I have this week installed new machinery and I feel that my plant is getting on a better production basis. I may not be as modern or as stream-lined as a good many other plants, but I am making an effort to improve my facilities. You speak something of securing a entirely new plant sometime in the near future. I do not know that this can be accomplished, but I am keeping my eyes open and if it is possible I will make a change; however, I cannot promise you definitely that this will be done. I have Sealy very much at heart and I want to make an effort to do the best I can for Sealy. I wrote you some while ago that I had made arrangements whereby I can give all my time to Sealy and perhaps in the long run some results may be shown.

Before signing the contracts and returning them to you, there are one or two questions which I want answered. At present you know I am doing some little selling in territory in North Carolina which was not originally alloted to me,

and also doing some little selling in northern Virginia [fol. 509E] which was not originally alloted to me. Both of these were with the consent of Sealy Inc. Before I sign the new contract I want to know if I can continue selling in these territories until Sealy makes some permanent arrangement for others to sell in these areas. Of course I do not consider this outside territory in which I am selling as belonging to me as a part of my contract, but I do wish to have confirmation from Sealy, or you, that it will be alright to continue selling in these areas until notified by Sealy to discontinue selling; without this selling being an infringement on present contract. I feel that I should have this protection before signing the contract.

Yours sincerely, Sidney, Sealy Mattress Company of Richmond, Inc.

SS:b

[Vol. 510E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 190

Dictated April 21, 1949
April 25, 1949.

Sealy Mattress Company
8 South Karvie Street
Richmond, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

I want to acknowledge receipt of your recent letter concerning the letter that I dispatched to you and the new three year contract.

It is the understanding of Sealy, Incorporated, and also of this writer, and this letter is sent to you as confirmation of that understanding, that you are permitted to continue to work the territory in North Carolina, which as been allotted to you, and also the small territory in Northern Virginia which was not originally allotted on your contract but which was also given to you with the understanding that you were to work it and make sales therein of Sealy merchandise until such time as Sealy obtained a permanent licensee for this territory.

Relative to the change of the minimums from $300.00 a month to $400.00 a month, this writer wishes to advise you that the $400.00 figure is the minimum which is now applied to all Sealy contracts both new and renewals and we are quite sure that, come what may, never will you find business so bad that you will not be able to produce at least a $400.00 minimum.

Very truly yours, Sealy, Incorporated, E. H. Bergman.

EHB:r

cc:Lawrence:

[fol. 511E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 191

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 6-4371
8 South Harvie Street

April 28, 1949.

Mr. E. H. Bergmann,
% Sealy Mattress Company,
2841 E. 37th St.,
Cleveland 15, O.

Dear Earl:

Thanks for your letter of April 25th in which you state it will be satisfactory for me to work in addition to my regular North Carolina contract territory the additional territory in North Carolina and additional territory in northern Virginia until Sealy secures a regular licensee in these areas.

I am signing and returning to you in triplicate, the renewal contract. Please let me have one of these back at your earliest convenience.

Business is not as good as I would like for it to be, but I am hoping that it will show improvement in the very near future.

With kindest regards and best wishes, I remain

Yours sincerely, Sidney, Sealy Mattress Company of Richmond, Inc.

SS:b

[fol. 512E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 192

SEALY MATTRESS COMPANY
Division of Metcalfe Brothers, Inc.

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

June 22, 1949
1904-A

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

Dear Roger:

* * * * * * *

As stated in my previous letter it is not my intentions to split up the North Carolina territory so it would not be acceptable to another manufacture on a franchise basis. I do think, though, that if Richmond, Atlanta or Bluefield are going to work it, we should be putting a little effort over there. As explained in one of my previous letters, we have had very weak representation in this territory and it is my intentions to work a part of this territory myself from now on. I do know from what little I have worked in that territory it is going to be impossible for us to do any kind of a job, especially around High Point, Greensboro and Winston Salem, unless we have a warehouse there.

* * * * * * *

[fol. 513E] Very truly yours, Sealy Mattress Company,
J. L. Metcalfe—Manager.

JLM:MEN

Dictated but not read.

[fol. 514E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 193

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia
Attn: Mr. J. L. Metcalfe.

June 28, 1949.

Dear Jack:

I have your letters of June 22nd on various subjects and I will treat each subject in a separate letter so that you will not have trouble in filing.

In regard to the North Carolina territory, I want to be frank with you and tell you that we have had Mr. Guckert through North Carolina and South Carolina to survey that territory for a possible licensee. I have not as yet had Mr. Guckert's report as he will not finish up until today. After I have read over his comments, I will be in a better position to make a recommendation to Mr. Bergmann and the Directors as to the handling of this open area.

I fully understand your needs for establishing a warehouse at High Point. I realize, too, that in order to establish the warehouse you will possibly have to take a lease or agreement for no less than a year's duration. If there does not seem to be any prospects of franchising the territory, the possibility of giving you assurance of a year's sole right to the territory would not be beyond the realm of possibility.

While I am awaiting Mr. Guckert's report, I would like for you to write to me and let me know if a year's exclusive to the territory (with a possibility of renewal from year to year) would be in line with your thoughts on the matter. I believe we are both in agreement we cannot break up the territory on a permanent basis unless we have some assurance that Richmond and East Point will draw the potential business out of their areas. I am not too worried about you getting the business for, if you give it your personal attention, I am sure the sales will be forthcoming if you have the proper set-up on a warehouse.

Yours very truly, Sealy, Incorporated, J. H. Lawrence.

JRL:r

[fol. 515E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 194

SEALY MATTRESS COMPANY
Division of Metcalfe Brothers, Inc.

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

August 13, 1949
2335-A

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

Dear Roger:

As requested in our recent telephone conversation I have hurriedly marked a map which shows the territory we have in our regular contract with Sealy marked with green ink and have marked with red ink that which we would like to have. This means we will be giving up a part of our territory covered by our contract in place of that which we would like to have. This, of course, is done in connection with your plans in possibly locating another plant at Charlotte, North Carolina.

Would like to call your attention to the fact that in one or two cases I am coming rather close to Charlotte, but at the same time, by locating a warehouse in High Point, which we will definitely do, we can better serve some of these towns out of High Point as some of their trucks go there at least once a week for other items. Not only this, but It gives us road passage from one part of our territory to another. I have reference particularly to Salisbury, North Carolina which is on the road from High Point over

to the North Wilkesboro territory which we definitely want to keep.

For a matter of record I wish to state that as follows are the counties in North Carolina which is in our contract:

These counties are: Stokes, Surrey, Allegany, Ashe, Yadkin, Wilkes, Alexander, Cardwell, Avery, Watauga, Rockingahm, Burke, McDowell, Mitchell, Madison, Buncombe, Haywood, Jackson, Swain, Graham, Macon, Clay, Cherokee, Transylvania, Henderson, Polk, Catawba and Yancey.

The following counties are those which we would like to retain for a High Point warehouse:

Avery, McDowell, Burke, Caldwell, Watauga, Ashe, Allegheny, Wilkes, Alexander, Catawba, Irebell, Rowan, Davie, Yadkin, Surry, Stokes, Forfyth, Davidson, Randolph, Guilford, Rockingham, Chatham, Alamant, Caswell, Person, Orange, Durham and Wake.

[fol. 516E] I expect your first reaction is I am asking for a lot more then what I am giving. This is true, but still on the other hand we have been getting quite a bit of business out of the Asheville territory and if a plant is not put in Charlotte, we would want to warehouse in Asheville as well as High Point. Of the two, though, we would prefer High Point because it would give us a little more population and put us in this city where most of these accounts where most of these accounts go with their trucks each week. Besides that, by your own admission, the Charlotte territory has two million people within a radius of sixty miles of Charlotte. To add the territory west of that to that franchise, and even with giving me what I want, they will still have a larger territory by population then what we have.

If this transfer or trade can be made, we would like to do so immediately. We have several people with whom we have discussed handling our line both on a salesman's warehouse basis and a distributor basis. I even know of one building in the city of High Point which can be rented or even purchased very reasonable. This might get away from us unless we act promptly.

As soon as you have had an opportunity to study this over, please let me hear from you.

Something else, though, I would like to call your attention to is that territory south and east of High Point which we will serve out of High Point but am not to interested in. This particularly is Fayetteville and some little territory below there. Perhaps Richmond would be interested in that. I expect he could serve them about as well as a plant in Charlotte.

Please let me hear from you promptly in regard to this matter.

With kindest regards,

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager

JLM:MEN

Encl.

Dictated but not read.

[fol. 517E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 195

August 24, 1949

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

I have your letter, along with the North Carolina map which you marked. I want to handle this just as quickly as you do, but I am not going to jeopardize my Charlotte territory without first being sure of my ground.

I feel confident that I can work this matter out with the prospects I have for a franchise in North Carolina although I may not be able to give you as much territory in the north central part of the state as you requested.

It appears to me that the town of Salisbury should be serviced by Charlotte and not out of the warehouse at High Point. This would make your line run from Hickory to Statesville to Lexington to High Point in the Greensboro and Winston-Salem area. Going east from High Point, your area would include Greensboro, Burlington, Reedsville and possibly Durham and Raleigh—providing I do not work out a franchise with a licensee at Rocky Mount, North Carolina.

I should be able to give you some definite information this week.

Best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 518E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 196

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

August 26, 1949
2410-A

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

Dear Roger:

Your letter of August 24th, has been received, contents of same carefully noted. In this letter you put me on the defensive where in the trade of this territory I would rather be on the offensive. In the first place it isn't a question of how you made the trade with the man in Charlotte because we are more interested in what we can get out of the trade ourselves.

We feel that the Bluefield plant should be given a little, consideration in the distribution of this territory in view of the fact that by your own admission as stated on your territorial variation sheet on the sales from July 1, 1948, through July 30, 1949, varifies this fact. Our potentiality in Bluefield is 1.227% while the Charlotte territory leaving out any of the territory we are now working whether we own it or not, is still 1.789%. On studying this report I find we have the lowest potential sales possibility of any plant in Sealy. At the same time I would like to call your attention to the fact that we are number 6 in sales performance in our territory. This within itself should show we can do a job for Sealy and if given additional territory, Sealy would get the benefit of it in our royalty payments.

If we get into a trade on this territory we definitely will want enough territory to accommodate at least one regular

salesman and will make the trade with the understanding that we definitely will warehouse in this territory. If this territory is large enough and we can get enough sales out of it, we will in all probability, and have already given serious thought of putting a plant down there. Most certainly a plant working in conjunction with this one would be more profitable to us than a warehouse if there is enough volume to be had there.

I might add here we are thinking of giving up our bottling venture, in which case, we would be in favor of working this territory with a plant.

[fol. 519E] I might also add here that I sill would like to be advised before anything definite is done with any other plant in North Carolina. You promised this recently in a telephone conversation.

With reference to Salisbury, North Carolina, we included this in what we would like to have in North Carolina to give us a direct road route in the western direction from High Point. It is true we would work a truck out of High Point coming north to Lexington, North Carolina, to get to Statesville, but by going through Salisbury, we not only pick up a good size town with prospective buyers but we would be 10 to 15 miles with extra driving for this truck. In other words, we have given this thing enough thought that we feel the territory requested on the map would in all probability give us enough territory to operate a small plant in. This, of course, would absolutely include Raleigh and Durham. Without these two towns I don't believe we would be interested in promising a warehouse in this section.

It might help you and help us too if you could get some figure on the definite population on the counties which we requested on this map. This would give us a better idea as to what we could plan for the future of same and also if we would be interested in a trade of our western section for it now. I believe this population survey would show that by giving to Charlotte the territory you now have open for them and our territory, including Asheville and west, would still give them a larger population then the Bluefield plant franchise would have if you gave us everything we requested on this map.

Once again I want to state that even though we marked

the map, we have not definitely stated we would enter into any kind of trade with Sealy for this territory. Most certainly if we do get into a trade, we will want something in return for it, which of course, would make the Bluefield plant more profitable for Sealy. In as much as the Charlotte territory is already larger than ours, I think this should be given serious consideration.

I would like to ask you again to please get in touch with us before you sign up any plant at all in Charlotte or any other part of North Carolina. Then, too, I also want to ask you that we possibly get together somewhere and fully discuss this territory thing before you make any promises to the Charlotte man on the territory which we now own. If you think it possible and worth your while, will be glad to meet you anywhere you say at your convenience and go into this matter thoroughly.

Please let me hear from you at your earliest convenience.

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

[fol. 520E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 197

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

September 15, 1949
1512-A

Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

Attention: Mr. J. R. Lawrence

Dear Roger:

In accordance with our telephone conversation the early part of this week, we are entering into a contract with the T. E. Dickerson Distributing Company, High Point, North Carolina, to handle our Sealy line of merchandise for the 27 counties as outlined in my letters as well as on a map. You will recall you authorized us to do this unless you advised us to the contrary by today, September 15th.

We will certainly appreciate your rewriting that part of our franchise to include these counties in North Carolina as follows:

Avery, McDowell, Burke, Calwell, Watauga, Ashe, Alleghany, Wilkes, Alexander, Catawba, Iredell, Davie, Yadkin, Surry, Stokes, Forsyth, Davidson, Randolph, Guilford, Rockingham, Chatham, Almance, Caswell, Person, Orange, Durham and Wake.

These are the counties in the territory we originally requested with the exception of Rowan county. As stated before, we reluctantly give up this county but of course if there is nothing you can do about it, I don't suppose we

should continue to argue about the matter. Nevertheless, I would like to have it understood that should something happen to the Charlotte territory and that plant does not go into operation soon, we most certainly and expect Rowan if another offer is made to another concern and this county becomes available. For the time being we will be satisfied with the exchange of the above counties for those that we own on our original franchise with Sealy.

We are not much in favor with oral or correspondence in regard to this matter and to make ourselves perfectly safe before investing too much money in this territory, most certainly want it added to our present contract so we will be sure where we stand.

[fol. 521E] Therefore, your prompt attention to confirmation will be appreciated.

I am going to High Point tomorrow and unless something happens we will have a stock of merchandise in a warehouse in High Point before October 1st. The Thomas E. Diskerson Distributing Company also has three salesmen and we will equipment them with necessary items to have them on the road offering this merchandise by October 1st.

With kindest regards,

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

Dictated but not read.

[fol. 522E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 198

September 19, 1949.

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. Jack Metcalfe

Dear Jack:

With further reference to your letters of September 13th and our telephone conversation in regard to the High Point territory in North Carolina, I am in a position to give you definite word that you may go ahead with your plans to work this territory, but I believe that the Sealy Board of Directors would require definite assurance from you that you will place a warehouse in High Point immediately and, within three years, or the expiration of your present contract, that you will place a plant in the High Point territory. This is similar to the situation that developed with Memphis in regard to the Dallas territory wherein their contract required them to place a plant at that point within three years. I feel sure that this same condition will be required on the High Point territory.

Looking at from an economic standpoint, it is evident that you could never obtain the full potentials of the rich High Point area without having plant facilities located within that area. You are trying to serve a larger and more important market from a smaller, distant plant and this seldom works out in the mattress industry. High Point is an important marketing center and there are considerable advantages on the location of a plant, with respect to your present setup.

If you find that upon the expiration of the three year period that it is unwise to establish a plant there, or that there is not sufficient business in the area, then this should

be brought to the attention of the Board of Directors and they will determine whether or not the contract should be renewed. If you find this entirely acceptable to your ideas, please confirm them so that the official approval of the transfer of this territory will be made.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 523E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 199

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

May 22, 1950
1030-A

Dear Roger:

Received your letter of May 15th, and after reading same carefully it seems to me you are leaving the blame on this misunderstanding on someone else. Frankly, I think these things should be written in a new contract so there would be no question in regard to it. I have your letter of September 23rd, in which you stated the counties we would give up and those we would get. This was right in the middle of most of the negotiations, though, and after two or three telephone conversations and all the correspondence from me in regard to the matter, my understanding was we would loose nothing in what we were asking for other then Rowan county. There has never been any contract sent to me including the counties that I have and I hope this will bring one by early May.

It might not make much point to you the importance of this matter which might confuse your records a little but it certainly does take from us two very good accounts who we have been selling for years. As in the past, I suppose I should shut up and take it but I do insist that you give me a certified supplement to my last contract stating the exact counties we are to operate in so we will know for sure what we are to work.

With kindest regards,

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

[fol. 524E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 200

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

May 22, 1950
1023-A

Dear Roger:

With further reference to your letter of May 15th, I have gotten out my correspondence with reference to the North Carolina territory. To the best I can figure out of it we actually own the following counties in the state of North Carolina: Avery, Burke, Caldwell, Watauga, Ashe, Allegheny, Wilkes, Alexander, Catawba, Iredell, Davie, Yadkin, Surry, Stokes, Forsyth, Davidson, Randolph, Guilford, Rockingham, Chatham, Almance, Caswell, Person, Orange, Durham and

I gather from your letter of the 15th, we will just forget about the county of McDowell. I do think, though, you should at least check the counties listed above, and if this is not in accordance with the above, please advise immediately. Also, if this is in accordance with your records, we would like to have some supplement to our 1949 contract verifying the fact.

I hope you do not feel we are being to obstinate on this matter but at least we should have a definite understanding so there will be no future misunderstandings such as this kind. I still think there are too damn many things left to a matter of understanding and not put in writing.

With kindest regards,

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

[fol. 525E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 201

May 25, 1950

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

I don't know what more you want in the way of a territory outline than that contained in my letter of September 23, 1949. I could have you an engraved scroll made but I don't think it would make you any happier because I could not include counties that were not listed in my letter of September 23rd. I am not trying to minimize the importance of territory to you, but you remind me of the guy who swapped a one dollar bill for a five and then hollered because the five dollar bill was not brand new.

If you will refer to your letter of May 22nd, file No. 1023-A, I will confirm the counties listed in the first paragraph of your letter with the exception of McDowell and Wake. McDowell county is in the Charlotte territory and Wake county is being serviced by Richmond. If you can talk Sidney Sutherland out of Wake county, it is all right with me.

For the sake of the record, your territory in North Carolina consists of the following counties: Avery, Burke, Caldwell, Watauga, Ashe, Allegheny, Wilkes, Alexander, Catawba, Iredell, Davie, Yadkin, Surry, Stokes, Forsyth, Davidson, Randolph, Guilford, Rockingham, Chatham, Almance, Caswell, Person, Orange and Durham.

What you don't know is that Charlotte squawked like hell when they didn't get the area around High Point. What do you want—egg in your beer?

Yours very truly, Sealy Incorporated, J. R. Lawrence.

JRL:r

[fol. 526E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 202

SEALY MATTRESS COMPANY
"Sleeping on a Sealy is like Sleeping on a Cloud"
Schenectady 1, New York
Telephones 4-3106 4-3107
Broadway and Weaver Street

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

July 22nd, 1949.

Dear Roger:

I was very sorry that I didn't have more time to talk with you in New York, as there were several things I wanted to go over with you, but you can readily see how impossible it is to do much visiting in such a small, congested area with the semblance of a madhouse.

One important thing I wanted to discuss with you was the Vermont territory. When I took over the state of Vermont, Mr. Weiner approached me and asked me to allow him to continue to sell in Brattleboro in order to avoid what for him might be an embarassing situation. It seems that there are five LeMay furniture stores located in Massachusetts, New Hampshire and Vermont, and he gave me to understand that he was selling all of them, and that if one of them were turned over to another Sealy plant, it might upset the entire deal. I went along with him and allowed him to continue selling LeMay in Brattleboro, despite the fact that my salesman objected, as it broke up his route, and also because Vermont is such a small state that Brattleboro is important.

I now find that the situation was not as represented and that the three LeMay stores in Massachusetts never belonged to the Boston territory and were never serviced by the Boston plant with Sealy merchandise. Also, I learned that the LeMay stores operate as individual units, that the managers can buy where they please and that one has nothing to do with the others as far as buying is concerned. Since this lent an entirely different aspect to the situation, I notified Mr. Weiner several weeks ago that we were going to handle Brattleboro ourselves, and in the

meantime, have called in the town on a couple of trips. It seems that the Brattleboro manager for LeMay came into the New York space, and after talking with Mr. Weiner, placed an order with him, despite the fact that this store [fol. 527E] has been solicited by our salesman. I spoke to Mr. Weiner about this, and he informs me that Brattleboro belongs to his territory, that Brattleboro is included in his contract and that he has no intention of giving up Brattleboro.

Mr. Weiner also tells me that he has spent a lot of money on this store and we have informed him that as far as we are concerned, there are two other fine stores in town and that if LeMay wants to buy his private brand and give up Sealy, it is alright with us.

There seems to be a difference of opinion as to where Brattleboro belongs. If you recall, I told you at the time of my arrangement with Mr. Weiner and you told me it was none of Sealy's concern, but that it was in the nature of an agreement between Mr. Weiner and myself, and that if I wanted to allow it, it was alright with Sealy, but that Vermont was ours entirely. Is it true that Brattleboro is included both in my contract and in Boston's? I would like to be very definite about this point, as I don't like to think that the relatively unimportant town of Brattleboro was given to both of us, and will become a Thermopolae to a couple of us Greeks.

If, as I understand it, Brattleboro belongs to the Schenectady territory (and if it doesn't I am quite amazed at the arrangement), I should like you to inform Mr. Weiner that this condition exists and that the sale and delivery of any Sealy merchandise by any of his representatives or by his plant represents an infringement of his contract and is subject to the specified penalties.

I would also appreciate your writing me on this at your earliest convenience, as we are now doing a good job in Vermont and want to go ahead and complete our plans in the state.

With kindest regards, I am,

Very truly yours, Sealy Mattress Company, M. H. Yulman.

MHY:mm

CC: Mr. E. H. Bergmann.

[fol. 528E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 203

July 26, 1949.

Sealy Mattress Company,
722 Broadway,
Schenectady 1, N.Y.

Attn: Mr. M.H. Yulman

Dear Mike:

I am sorry I didn't get an opportunity to sit down and have a few words with you away from the mad-house of the New York Market. I will agree with you that in the tiny space we have there it is most difficult to try to carry on any kind of conversation. I am hoping that we can do something towards obtaining a larger space before too long.

I had to leave Wednesday to go down to Philadelphia to see the McMahon people. I had hoped that they would be at the show, but when I found out that they were not coming up I immediately went to Philadelphia as I have a very ambitious selling job at that particular point. I am glad to say that I was received very well and the prospects of signing McMahon look very good indeed. I will know definitely in September.

I am sorry that the discussion of Brattleboro, Vermont comes up for it brings to light the fact that this office made an error in assigning the territories in your contract, and also in the Allston contract. I remember how this first came up when we discussed the territory with the Waterbury plant. I proposed to Allston that they surrender the state of Vermont and in turn I would give them the counties in Eastern Massachusetts that were taken back from the Fall River plant. Mr. Weiner agreed to this with the exception that he requested to continue to serve the city of Brattleboro. I don't remember the full details of why he wanted to retain this city, but I do remember that his argument sounded very logical at the time.

I believe when I wrote you that we were adding the Vermont territory to your contract, that we were doing so with the exception of Brattleboro. I note that your contract

calls for the entire state of Vermont, and this is an error on our part. When we renewed Allston's contract the first of May of this year we elimihated Vermont from his territory holdings with the exception of Brattleboro, so it is definitely in his contract.

Mike, with the risk of having you angry at me, I am going to tell you that in my opinion you should let the Brattleboro situation remain as it is. I do not see where it is of such great importance to you, although it may be [fol. 529E] a point of contention with your salesman. Weiner has been selling this account for sometime and apparently is on very good terms with them. As I understand, it is right next to the state line of New Hampshire and is on the route served by one of his salesmen. I had agreed to leave this town in his territory and this desire of yours to move him out proves rather embarrassing to me. Remember, Allston surrendered this state to Sealy so that it could be put into your contract. The counties that they received in Massachusetts did not have as much buying power as the territory they surrendered. I do not believe you gave up any territory and that the addition of the Vermont territory was given to you as we felt that it rightfully belonged to your service area.

Perhaps when I see you in September at the Executive Committee meeting, we will have a chance to discuss this more fully than we can do by correspondence. I think you should not interfere with the setup of Brattleboro at this time.

Best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

if

cc:Bergmann.

[fol. 530E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 204

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Schenectady 1, New York
Telephones 4-3106 4-3107
Broadway and Weaver Street

July 29th, 1949.

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I have your letter of July 26th, relative to Brattleboro, and regret to find that this embarasses Sealy in any way. However, since it does, and since I have all the facts, I don't see how it could be of any help to any of us to try to split it open any wider.

Since this territory was apparently assigned to both Allston and ourselves, and since Allston has been servicing the town regularly, we will, of course, bow out rather than confuse the issue any further. I will simply inform my salesman that at present this territory doesn't belong to us. As for its importance to us, that is an entirely different matter, as it cuts a large corner from the state of Vermont and makes it unprofitable to travel the eastern part of Vermont. As for the reasoning that it is next to the state line of New Hampshire, by the same token, the state line of New Hampshire is right next to the eastern part of Vermont.

Therefore, we will leave the situation in the status quo, and will discuss it at some other time.

With best wishes, I am,

Very truly yours, Sealy Mattress Company, M. H. Yulman,

MHY:mm

cc: Mr. Earl H. Bergmann, Mr. Israel Weiner

[fol. 531E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 205

SEALY MATTRESS COMPANY
Chicago 22, Illinois
Phone: Michigan 2-2050
903-933 North Halsted Street

August 3, 1949.

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

Dear Roger:

To keep you posted with reference to the counties in northwestern Wisconsin that St. Paul requested, we have made a major change in our representation in the territory this Market. As soon as Harry Newett has an opportunity to explore the area, will report to you with reference to whether we wish to work these counties or not.

For your information, these counties are:

Ashland
Sawyer
Rusk
Chippewa
Eau Claire
Jackson
LaCrosse

Very truly yours, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: C.B.McGillivray, H.J.Newett.

[fol. 532E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 206

September 26, 1949.

Sealy Mattress Company
903 N. Halsted Street
Chicago, Illinois

Attn: Mr. Morris A. Kaplan

Dear Morry:

I am still holding your letter of August 3rd in regard to the following counties in the state of Wisconsin:

Ashland
Sawyer
Rusk
Chippewa
Eau Claire
Jackson
LaCrosse.

If you have arrived at any definite conclusion regarding these counties, I will appreciate hearing from you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 533E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 208

August 19, 1949.

American Bedding Company, Inc.
200 West Tremont Avenue
Charlotte, North Carolina

Attn: Mr. Armstrong and Mr. Carpenter

Gentlemen:

I am writing you as you represent the sales efforts of the American Bedding Company in relationship to the possibility of a Sealy franchise for the area. Upon my return to the office, I went over the territory we discussed and find that there is a possibility of re-allocating the territory so that you may service the Asheville, North Carolina area. If you will take a map and outline the following territory, you can see how this would enter into your service abilities.

In the state of North Carolina, all counties south of and including the following line of counties: Madison, Buncombe, Rutherford, Cleveland, Lincoln, Mecklenburg, Cabarrus, Stanley, Montgomery, Moore, Lee, Harnett, Johnston, Wilson, Green, Lenoir, Craven and Carteret. In the state of South Carolina, all counties north of and including the following counties: Spartanburg, Union, Fairfield, Kershaw, Sumter, Clarendon, Williamsburg and Georgetown.

This is somewhat of a revision as it would eliminate the High Point and Raleigh area from service out of Charlotte. However, I do not believe that these areas are of too much importance to your operations. The only towns that seem to be somewhat in question would possibly be Statesville and Salisbury in North Carolina. Of course, the addition of the Asheville area would mean a larger potential for that part of the state and it seems to tie in well with the Spartanburg, North Carolina area.

I wish you would look this over carefully and let me hear

from you as I am trying to establish a reasonable sales area for your operations. While I have not as yet had an opportunity to obtain the feelings of the Board in this matter, I feel sure that your company has a good chance [fol. 534E] of obtaining the Sealy franchise for the Charlotte area.

Meanwhile, I would appreciate it if you will have Mr. Jones follow up with his auditor and be sure that we receive a current statement of the business.

Yours very truly, Sealy, Incorporated J. R. Lawrence.

JRL:r

[fol. 535E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 209

September 9, 1949.

American Bedding Company
200 West Tremont Avenue
Charlotte, North Carolina

Attn: Mr. C. E. Jones

Dear Mr. Jones:

• • • • • • •

We are prepared to offer you the following territory. Counties in North Carolina—Cherokee, Graham, Clay, Swain, Macon, Jackson, Haywood, Transylvania, Madison, Buncombe, Henderson, Yancey, McDowell, Mitchell, Rutherford, Polk, Cleveland, Lincoln, Gaston, Mecklenburg, Rowan, Cabarrus, Stanly, Union, Anson, Montgomery, Richmond, Moore, Scotland, Hoke, Roberson, Lee, Harnett, [fol. 536E] Cumberland, Sampson, Bladen, Ponder, Columbus, Brunswick and New Hanover. Also, the following counties in the state of South Carolina—Spartanburg, Cherokee, Union, York, Chester, Fairfield, Lancaster, Kershaw, Chesterfield, Darlington, Lee, Sumpter, Clarendon, Marlboro, Florence, Williamsburg, Billon, Marian, Georgetown and Horry.

• • • • • • •

If these arrangements meet with your approval, I suggest you let me know immediately so that a formal contract may be prepared. We can send our engineer, Mr. E. J. Guckert, to your plant, in order that you may be fully familiar with the methods and merchandise to be manufactured under Sealy specifications. According to the itinerary of our sales manager, Mr. J. F. Zarish, he can be at your plant on October 27th and 28th to go over the merchandising and advertising aids of Sealy, Incorporated.

Yours very truly, Sealy, Incorporated J. R. Lawrence.

JRL:r

[fol. 537E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 210

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Charlotte, North Carolina
Telephone 2-5007
200 West Tremont Street

December 20, 1949.

Dear Sir;

Firstly, I would like to personally thank you for coming to our aid when we needed you most. Your recent visit has rectified just what we had hoped it would and now we are proud of the products of the Charlotte plant with Sealy's name on it.—Thanks.

The reason I am directing the next portion of this letter to you rather than the Sealy office is because you understand the happenings in the territory I am about to mention. While you were here you saw and heard first hand complaints from this territory and you also saw the job we are doing with our regular line there. The territory I am speaking of is the upper counties of South Carolina: Greenville, pickens, Oconne, Anderson, Abbeville, Greenwood, Laurens, Newberry, Saluda, Lexington, and Richland. Especially am I concerned about the cities of Greenville and Columbia. Sealy does not have a regular account in these two very important cities at the present but in the past have been fairly strong. We have four of the largest accounts in these towns with our regular line. (Haverty's, Maxwell Bros., National Mnfg. & Stores Inc., and Rustins) These are all large chain stores and have stores that are in our present territory and I add proudly that we sell every one the complete Sealy line. You remember the Maxwell Bros. party and how they reacted to Sealy, well, they have stores in both towns.

Now I come to the point—Sealy is not doing any business in most of those counties anyway and we have been assured that if these counties were included in our setup we could sell the above stores Sealy with our regular line.
[fol. 538E] Because you are so familiar with these facts I am asking you to present these facts to the Sealy Inc. officers and I am sure they will see that the Charlotte plant should be granted a trail of the asked.

Yours very truly, Sealy Mattress Company, Graham Armstrong.

P.S. Hoping to hear from you about the car real soon.

[fol. 539E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 211

January 13, 1950.

Sealy Mattress Company
200 West Tremont Street
Charlotte, North Carolina

Attn: Mr. Graham Armstrong

Dear Graham:

This letter is in reply to your letter of December 20th, addressed to the attention of Mr. E. J. Guckert. This letter has reference to the territory in South Carolina. Earl was in Chicago the other day and turned the letter over to Mr. Bergmann and myself inasmuch as the handling of territory does rest entirely with this office.

I understand fully your situation in regard to the counties mentioned in your letter, but I would like to suggest that you let this ride along until at least June 30, 1950. There are certain things in the process of revision and these changes may solve this situation entirely. At the present time, it is not a matter that can be discussed with any certainty.

Joe Zarish will be at the High Point market on January 23rd and there is a possibility that I will be there on Monday and Tuesday of the first week. Possibly I will have an opportunity to discuss this fully with you at that time.

Yours very truly, Sealy, Incorporated J. R. Lawrence.

JRL:r

[fol. 540E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 214

August 24, 1949

Sealy Mattress Company
8 S. Harvie Street
Richmond, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

If my information is correct, you are not doing much of a Sealy sales job in the city of Norfolk, Virginia, as well as the area around Norfolk. I seriously doubt that you are doing much business in the eastern part of the state of North Carolina.

I am writing you to see whether or not you would consider surrendering the Norfolk, Virginia area and the eastern North Carolina area back to Seal, Incorporated so that we may establish a licensee who will obtain the potentials of that area.

To be frank with you, the prospect I have in mind is the Cotton Belt Mattress Company, Pine Tops, North Carolina. I think I wrote you regarding these people once before. They seem to be doing an aggressive job although they have been handicapped by not having a brand name.

I want you to look this matter over very carefully and give me your frank and honest appraisal of the situation. Please do this promptly as it is a matter I cannot dilly-dally over for any period of time.

Best personal regards,

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 541E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 216

Sealy Mattress Company
8 S. Harvie Street
Richmond, Virginia

Dictated September 3, 1949
September 7, 1949

Attn: Mr. Sidney Sutherland

Dear Sidney:

I want to acknowledge receipt of your letter of August 31st and I have carefully read what you say regarding the territory and the thoughts and wishes of Jack Metcalfe in regard to his locating a factory, possibly at High Point, North Carolina.

I am going to forward your letter to Roger Lawrence in Chicago and he and I will discuss the matter between us after he has had a chance to digest it but frankly, I am not inclined to give up Norfolk for a trade for Washington because it is my honest belief that Norfolk actually belongs to Richmond and is in the normal and natural trading area of Richmond and if anybody can do a good job there, it should be you. It seems a little farfetched to me to have to go down to Pine Top, North Carolina in order to get a plant to do a decent job in Norfolk.

I certainly would want to give considerable thought to the accommodation of the city of Washington or the District of Columbia to your contract because it is my thought that Washington naturally belongs in the Baltimore territory. I would want to study that matter carefully before I would assign Washington to Richmond or any other territory because I hope someday we will be able to have someone handle the Baltimore and Washington territory as well as another plant in Philadelphia.

Just as soon as we have had a chance to study this letter of yours further and we find out what success we have in working out something definite with our proposed licensee in Charlotte, North Carolina and the natural division of the territory between that proposed plant and Jack Metcalfe, I will advise you.

Very truly yours, Sealy Incorporated, E. H. Bergmann.

EHB:r

[fol. 542E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 217

September 9, 1949

Sealy Mattress Company
8 S. Harvie Street
Richmond, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

Earl and I have discussed the subject of your letter of August 31st in regard to the surrendering of the Norfolk and eastern North Carolina territory in exchange for the Washington, D. C. territory and frankly, I do not believe it would be for your benefit or for the benefit of Sealy, Incorporated to make such a deal.

Our thinking is that you should make every effort to exploit the Norfolk and eastern North Carolina market and go in there fully determined to obtain your share of the business. This area falls within your natural trade area and it does not appear beneficial to abandon such an area for a distant market.

As far as Sealy, Incorporated is concerned, we will discontinue, for the present time, the idea of franchising territory to the Cotton Belt Manufacturing Company. This will leave the way open to give full consideration to the request of Jack Metcalfe for some of the north central section of North Carolina, which includes the High Point area.

Appreciating your prompt consideration and thoughtfulness in handling this matter and assuring you of our continued support, we are

Yours very truly, Sealy, Incorporated, J. R. Lawrence

JRL:r

[fol. 543E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 218

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 6-4371
8 South Harvie Street

September 13, 1949.

Mr. Roger Lawrence
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I acknowledge with thanks your communication of September 9th which is in answer to my communication to you and Earl under date of August 31st.

I understand that Earl is on his vacation so I am writing to you and sending a copy of this letter to Earl in Cleveland.

I agree with both you and Earl that some one in Washington, D.C. and Baltimore, Maryland could do the best job on Sealy as these two towns are certainly linked together geographically. My only reason for suggesting that Washington be swapped to me was to work with Sealy so that if Sealy desired a plant in North Carolina, I wanted you to know that it was my intention to cooperate with Sealy at all times.

I further agree with you that Norfolk, Portsmouth and Newport News, Virginia are geographically bound to Richmond but I thing both you and Earl know the mattress business well enough to know that you can not do a great deal of business against local competition unless you are in a position to give local service. I am beginning to find this out and I realize that something must be done in order to secure business in this area. That is why I made the connec-

tion at Goldsboro, N.C. when the opportunity presented itself. Our business has picked up in eastern North Carolina and I believe that it will continue to do so.

I am using every effort possible to make connections to get local service in Norfolk, Portsmouth and Newport News, area. I do not know just when I can make the final arrangements but I am leaving no stones unturned trying to make the proper arrangements.

[fol. 544E] I note that you state that the arrangements in Goldsboro will not be distrubed. I believe that this arrangement at Goldsboro and any arrangement that Jack Metcalfe may make in the other part of North Carolina, that between the two of us we can certainly secure worthwhile business and serve North Carolina as it should be served.

I would be delighted to hear from you at any time, with kindest personal regards, I remain,

Sincerely, Sidney.

SS/mo

[fol. 545E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 219

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 6-4371
8 South Harvie Street

August 31, 1949.

Mr. Earl Bergmann
Sealy Mattress Company
2841 E. 37th Street
Cleveland, Ohio

Dear Earl:

I have given very serious thought to the matter of Roger's letter of August 24th regarding Norfolk, Virginia and eastern North Carolina territory.

If you will recall in my original contract I had allotted to me some few counties in northeastern North Carolina. The Cotton Belt Mattress Company, Pine Top, N. C. is in Edgecomb county, which is one of the counties originally allotted to me.

In the additional North Carolina territory, allotted to me on a temparary basis, is Goldsboro, N. C. in which city we have established a distributor with warehouse facilities as of July 1, 1949. We have just sent him some merchandise and he is now beginning to do some business. I believe he will eventually do very good as the man is an experienced mattress man. He was warehouse manager for the Simmons Company for about six years. This was before going into business for himself.

In reference to Norfolk, Virginia it is my plans to either establish a warehouse or a distributor at Norfolk just as soon as it is possible for me to do so. The Cotton Belt Mattress Company is as far away from Norfolk, Virginia as is

Richmond, so putting a factory at Pine Top, N. C., in my opinion, would not help the Norfolk, Virginia situation.

Jack Metcalfe of Bluefield, Virginia is interested in putting a factory in North Carolina territory, perhaps at High Point, North Carolina. It appears that Jack has done a good job for Sealy, Inc. and if a plant is to be established in North Carolina I would think Jack Metcalfe would be the proper party to first consider.

[fol. 546E] I have discussed this matter with Jack and his thoughts on the matter is, to give him the central part of North Carolina and the territory in eastern North Carolina which was allotted to me on a temparary basis. I believe Jack can continue to do a good job for Sealy, Inc.

I have studied closely the "Sealy Territorial Variations" sent out from Chicago office covering the period July 1, 1948 to June 30, 1949. You will note that you have 28 factory points listed. In the column percentage of United States Potential, Richmond is in 27th position on the list. This means that Richmond has the next to the last smallest population territory in the United States.

In the matter of percentages of actual annual sales preformance, Richmond is in 12th position or a total percentage of 116% or 16% over and above the expected 100%. This is not as good as I would like it to be, nor is it as good as I expect it to be, but I certainly do not consider it bad.

I believe that you think I have the interest of Sealy, Inc. at heart and I want to see Sealy, Inc. grow. I am increasing my output and I am putting in some new machinery. I expect to have the S & G vertical border machine working by September 10th (the S & G Company has promised to put the machine on a truck and bring it to Richmond and install the machine on September 6th or 7th).

I spoke on the telephone to you about Washington, D. C. If you can get the firm you mentioned in Philadelphia interested in Sealy, Inc. then why not give the Philadelphia factory Baltimore and most of the Maryland territory, then give the District of Columbia and the adjacent counties to Richmond. If Sealy, Inc. would do this then I would be willing to give up my original eastern North Carolina territory and Norfolk and Portsmouth, Virginia territories.

I think the territory that I would surrender back to Sealy, Inc. would about equal, in population, the population of the District of Columbia and the adjacent counties that Sealy, Inc. would give me in the new contract.

As stated before I have the interest of Sealy, Inc. at heart and I am willing to work with Sealy, Inc. in every way possible, but I can not reduce the size, in population, of my present original territory and expect to keep up my sales or do any expanding.

If a new contract is made with me changing my territory to include Washington, D. C., which is only 100 miles from Richmond, I would put a warehouse in Washington or find a good distributor in Washington.

[fol. 547E] Let me have your thoughts in this matter. Jas as an example of what I am trying to do, my sales for August will be very close to $25,000.000.

With kindest personal regards, I remain as ever,

Sincerely, Sidney Sutherland.

ss/mo

[fol. 548E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 220

September 9, 1949.

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

We have heard from Mr. Sutherland of Richmond in regard to his situation in the northeastern corner of North Carolina, and from all indications it appears wise for him to keep the territory he has under franchise and for Sealy, Incorporated to forget the idea of franchising another factory in that area. This clears the track to work out your desires for territory in the north central portion of North Carolina.

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[fol. 549E] Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 550E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 221

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

September 23, 1949.

Attn: Mr. J. L. Metcalfe

Dear Jack:

I don't suppose I have to tell you how much better you came out in surrendering certain counties in North Carolina and acquiring other counties in the north central portion of North Carolina, but if you want the actual record on it, it is as follows.

You gave up the following counties that went into the Charlotte territory. Mitchell, Yancey, McDowell, Polk, Henderson, Buncombe, Madison, Heywood, Transylvania, Jackson, Swain, Macon, Clay, Graham and Cherokee. The combined buying potential, based on percentage of the United States for these counties, amounts to .1765.

You acquired the following counties in North Carolina: Iredell, Davis, Forsyth, Davidson, Rockingham, Guildford, Randolph, Caswell, Alamance, Chatham, Person, Orange and Durham. The combined buying potential, based on the same percentage as above, is .6691.

While these combined figures do not appear to be large, I can assure you that it represents many thousands of dollars of buying potential. For instance, on the survey of territory that we mailed out in July, we showed the Bluefield territory as owning 1.227 percent of the United States potential. This figure is now revised to 1.719. On the same sheet we showed Charlotte as owning 1.789 of the United States potential which is now reduced to 1.297.

Personally, I think this is a very good move for you and one that will have more benefits in the future than is apparent at the present time. Naturally, we in Sealy expect that your sales will show an increase and that you will cover this new territory as well as you have your old territory.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 551E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 222

September 27, 1949.

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

We had a visit the other day from Mr. Armstrong and Mr. Jones of the American Bedding Company of Charlotte, North Carolina. They have signed a Sealy contract, effective October 1st, for the area in southern North Carolina and the northern part of South Carolina. Needless to say, there was a lot of pressure about the High Point area.

The next time you are down that way, I would appreciate it if you would pay a call on Mr. Armstrong of the Charlotte plant, in order to establish a working agreement for fringe accounts that will appear on the borderline between the two territories. Also, there will be some working agreement necessary on a group of chain stores that have stores in each area. It will be a good neighbor gesture on your part and will help the Charlotte boys to get started in the Sealy organization. I know you can be of help to them.

The Executive Committee of Sealy meets this week and will take up the matter of the approval of the territory outlined in my recent letter to you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 552E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 223

October 10, 1949.

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

I am glad to let you know that the Executive Committee met last week and approved the transfer of the North Carolina territory as outlined in my previous letter.

I am today sending the signed contract for the High Point, North Carolina market space to Mr. Casey of the Southern Exposition Furniture Building.

If you should have a meeting with the Charlotte people I would appreciate your letting me know your reactions and also how matters are working out.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 553E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 224

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Bluefield, Virginia
Telephone 4621
Railroad Avenue
Post Office Box 432

May 11, 1950
1977-A

Mr. J. R. Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago, 11, Ill.

Dear Roger:

It seems there is some mixup as to exactly where our line ends in western North Carolina. It seems both Charlotte and us have been working the city of Marion, North Carolina, which is in McDowell County. By coincidence we have both been selling merchandise there but to different firms. Our salesman, though, on his last trip there discovered this and followed through on it and reported back to me about it. Immediately upon receiving this information I contacted the Charlotte plant and reminded them that McDowell County was in our territory.

In reply to this, I am advised by Graham Armstrong that McDowell County is in their contract. Now it seems both of us claim McDowell County. In making the exchange for that portion of eastern North Carolina that we wanted for that portion of North Carolina that we were giving up, we will refer you to our several letters last fall. In none of our correspondence was there ever any question over McDowell County. I trust you will recall we did have quite a discussion over Rowan County, in which the city of Salisbury is

located, but we finally gave up the idea and you completed your business with Charlotte accordingly.

By our letter of August 13th, #2335-A we listed the counties that were in our old contract, and also, listed the new counties that we wanted in the exchange of territory. In your letters immediately following you stated definitely that you could not give us Rowan County but the rest of it would be considered. On October 10, 1949, we received a letter in which you stated the Executive Committee had approved the transfer of the North Carolina territory as outlined in previous letters.

Now please advise who actually owns the county of McDowell.

[fol. 554E] With kindest regards,

Very truly yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:MEN

[fol. 555E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 225

May 15, 1950.

Sealy Mattress Company
Railroad Avenue
Bluefield, Virginia

Attn: Mr. J. L. Metcalfe

Dear Jack:

Just when I think I have matters straightened out in the southeastern section of the country you come up with another situation in regard to territory. Our file shows that we began dickering about territory in North Carolina in July, 1949 and there are numerous pieces of correspondence between you and the writer regarding the territory you wanted and what Sealy, Incorporated was willing to add to your contract. Needless to say, you did obtain a very good deal even though you did not get all the counties that you asked for.

In regard to McDowell county in North Carolina, this county was under discussion regarding the area you should give up in return for the territory centered around High Point. I do not remember exactly how this matter was concluded, but my letter to you, dated September 23, 1949, stated the action of the Board of Directors in approving the transfer of additional territory to you. In that letter I stated as follows: "You gave up the following counties that went into the Charlotte territory—Mitchell, Yancey, McDowell, Port, Henderson, Buncombe, Madison, Heywood, Transylvania, Jackson, Swain, Macon, Clay, Graham and Cherokee. You acquired the following counties in North Carolina—Iredell, Davies, Forsyth, Davidson, Rockingham, Gilford, Randolph, Caswell, Alamance, Chatham, Pierson, Orange and Durham."

In this same letter I pointed out to you that, based upon the combined buying potential of these counties, you gave

up counties that had only a .1765% of the U. S. buying power whereas you obtained counties that had a combined percentage of .6691%. While these percentage figures may not seem large to you, they just about double the potential you had under your original Bluefield contract.

In keeping with the agreement, we assigned McDowell [fol. 556E] county to Charlotte, and we will have to request that you withdraw Sealy representation in that county. I can see no point in getting into a controversy over this matter as it is not important enough to confuse the records.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 557E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 226

September 20, 1949.

Sealy Mattress Company
P. O. Box 350
East Point, Georgia

Attn: Mr. Lawrence Zimmerman

Dear Lawrence:

This is to let you know that we have definitely committed the North Carolina and northern part of South Carolina territory to the American Bedding Company of Charlotte, North Carolina. The proposed contract is to go into effect October 1, 1949, and will, of course, be subject to the approval of the Sealy Board of Directors.

Sometime in the past year, we gave you temporary permission to sell in the Charlotte area and the counties located in the northern section of South Carolina. This is notice that you should withdraw your representation and liquidate any Sealy stock you may be holding in warehouses in that section. This setup does not affect the counties in the southern part of South Carolina which are in your regular contract.

We believe that this move is a good one for Sealy, Incorporated and that Sealy will obtain the representation in that area to which they are entitled. The American Bedding Company has good manufacturing facilities and, with the proper training of their sales force, there is no reason why Sealy should not be well represented in bedding sales in and around the Charlotte area.

Best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 558E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 227

September 20, 1949.

Sealy Mattress Company
3 S. Harvie Street
Richmond, Virginia

Attn: Mr. Sidney Sutherland

Dear Sidney:

We have made arrangements with the American Bedding Company of Charlotte, North Carolina to service the Charlotte area and we have given Mr. J. L. Metcalfe of the Bluefield plant permission to service the High Point area in North Carolina.

This brings to mind that sometime during the past year Sealy, Incorporated gave you temporary permission to service additional counties in North Carolina. In view of the fact that the new arrangements go into effect on October 1st, we will have to ask you to withdraw from the following counties: Parson, Orange, Durham, Wake, Lee, Chatham, Harnett, Sampson, Cumberland, Bladen, Columbus, Pender, Brunswick and New Hanover.

As soon as the signed contracts are in the office, it means that the following counties in North Carolina can be added to your regular contract: Granville, Franklin, Wilson, Johnston, Wayne, Greene, Lenoir, Duplin, Craven, Jones, Caslow and Cartaret.

This arrangement should enable you to keep your jobbing representation at Goldsboro, North Carolina. If you are able to complete your arrangements with the jobber in Norfolk, you should have good coverage of your territory. Please notify your jobber at Goldsboro not to go across the county lines of Harnett, Sampson, and Pender inasmuch as this is in the Charlotte franchise, beginning October 1st.

Best wishes.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 559E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 228

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

East Point, Georgia
Telephone Calhoun 2121
100-114 East Forrest Avenue
Post Office Box 350

November 18, 1949

Mr. J. R. Lawrence,
Sealy, Incorporated,
666 Lake Shore Drive,
Chicago 11, Ill.

Dear Roger:

When you and Earl Bergmann made an appointment to meet with me relative to our contract with Sealy, there were several things which I wanted to discuss with both of you. One of the items is three counties in South Carolina that is now the Charlotte territory. When you were unable to make this conference with Earl and me I thought surely I would be able to contact you sometime Wednesday morning as I was leaving Wednesday afternoon on the 2:30 plane. Unfortunately, I was not able to get in touch with you.

We are establishing a warehouse in Charleston on January 1. We intend serving territory up to but not including Columbia from this warehouse. The following three counties are on the coast and according to my information are being served by other manufacturers from their Charleston warehouse. According to the information I have been able to gather, it would be very difficult to serve these counties out of the Charlotte plant because of bad freight connections and freight cost. The man who is to operate out of our warehouse formerly worked for Southern Spring Bed and he has three or four accounts in these counties which he feels would give him a fair amount of their volume if they

could get the one day delivery which is available out of Charleston. For these reasons, we are listing below the three counties which we would like to have Charlotte and Sealy authorize us to include in our territory.

Horry
Williamsburg
Georgetown

[fol. 560E] I realize that the handling of this matter will be far more difficult by mail than if we could have discussed it in person. Since it did not work out that way, we would certainly appreciate your looking at the map yourself and then contacting Charlotte so that you can advise us immediately in order that we may make our plans accordingly.

Yours very truly, Sealy Mattress Company, Lawrence J. Zimmerman.

LJZ:hh

[fol. 561E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 229

November 22, 1949.

Sealy Mattress Company
P. O. Box 350
East Point, Georgia

Attn: Mr. Lawrence Zimmerman

Dear Lawrence:

I have your letter of November 18th in regard to the counties of Horry, Williamsburg and Georgetown in the state of South Carolina. I am indeed sorry that I did not have an opportunity to discuss this with you at the time that the matter was taken up with Earl Bergmann. He did tell me of his conversation with you and requested that I try to work the matter out to everyone's satisfaction.

On October 1st we issued a contract to the Charlotte plant and the territory allotted to them did contain the counties in question. Since their operations have only recently begun, I think it would be very difficult to write to Charlotte and ask them to surrender back three counties before they have even had time to set up a sales plan. The subject of territory is a rather touchy one at the present time for we did some operation on the northern part of the territory in North Carolina and gave a large number of the counties to Jack Metcalfe so that he could establish his plant in High Point, North Carolina. For me to write them at this time and ask for three additional counties would just about put the Charlotte plant on the rocks as far as their plans for cooperation with Sealy are concerned.

What I would like to suggest is that you call Mr. Graham Armstrong of the Charlotte plant and make a deal with him whereby you may work these counties on a temporary basis or until such time as he may obtain enough experience with the territory to determine whether or not he would be willing to surrender these counties to you. It may be that he is

willing to do it at the present time, but I honestly feel that the approach would be better from you rather than have Sealy, Incorporated hack away at them again. As the matter now stands, Sealy, Incorporated does not have the [fol. 562E] authority to hand this territory over to you and it would have to be surrendered back to us before it could be placed under your handling.

If you do not wish to make the approach directly, let me know and I will write to Charlotte (with my fingers crossed).

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 563E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 230

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Memphis 2, Tennessee
Telephone 35-1631
1047 Florida Street

November 22, 1949.

Sealy, Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Roger:

You requested information from me and from Marcus as to the counties that we anticipated continuing to work in Kentucky, and I am herewith attaching such list.

In addition to the above, we anticipate continuing to work the town of Evansville in Indiana.

If there is anything about this you do not understand or any further discussions you desire, I, of course, should be pleased to hear from you, but as the matter now stands we will be willing to surrender everything in Kentucky other than the counties as indicated on this list and the town of Evansville, Indiana.

Kind regards,

Sincerely, Sealy Mattress Company, Louis G. Haas.

LGH/b

[fol. 564E] Counties to be Served by the Sealy Company of the Southeast, Memphis, Tennessee

Allen
Ballard
Barren
Butler

Caldwell
Carlisle
Christian
Crittenden

Daviess
Dexter

Edmonson
Fulton

Graves
Grayson

Hardin
Hart
Henderson
Hickman
Hopkins

Larue
Livingston
Logan
Lyon

McLean
Marshall
Mccracken
Muhlenberg

Ohio

Simpson

Todd
Trigg

Union

Warren
Webster

[fol. 565E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 231

November 29, 1949.

Sealy Mattress Company
1047 Florida Street
Memphis, Tennessee

Attn: Mr. Louis G. Haas

Dear Louis:

This will acknowledge your letter of November 22nd containing the list of the counties you wish to continue to serve in the state of Kentucky. In checking over this list I note that you list a county by the name of Dexter. There is no such county in Kentucky, but I imagine you mean the county of Calloway—there is a town by the name of Dexter in this county.

I note what you say about the town of Evansville, Indiana, and I would like to know whether or not you are surrendering the counties of Floyd and Clark in the state of Indiana.

It is going to be exceedingly difficult to work out a deal with Louisville for one of the counties that you mention. The county of Hardin comes within thirty or forty miles of Louisville. You have left out the counties of Hancock, Breckenridge and Meade, and I am wondering if you could not also surrender the county of Hardin and Larue. It would make it much easier to work out a territory if these two counties were in the part of Kentucky that you are surrendering.

I have not as yet listed the counties to the Logan Company of Louisville, and will wait until I receive a reply from you before going into the matter. If you will look at the map, you will follow the counties that I mentioned and which seem to be sticking out into the other territory like a sore thumb.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 566E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 232

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Oxford Road
Franklin, Warren County, Ohio
Telephone
Franklin 78-79

February 1, 1950.

Mr. J. R. Lawrence
Sealy Mattress Company
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

While in Chicago Louis Haas and Herb. Neilson worked out an agreement whereby Sealy of Cincinnati is going to take over, on a temporary trial basis, a portion of the Kentucky counties previously served by Sealy of Memphis.

Louis has been kind enough to send us a list of the counties which will be maintained by the Memphis plant, and a copy of the list of these counties is enclosed herewith.

I understand from Herb. Neilson that Memphis does not have the entire state of Kentucky, and part of this is served out of Bluefield.

Therefore, so that we are sure we do not step out of our allotted territory, I would greatly appreciate it if you could forward to me a list of the counties that will be served by Sealy of Cincinnati.

In other words, this would be a list of all the counties in Kentucky minus those counties which Memphis is retaining, and minus those counties which are served by any plant other than Memphis.

Thanking you in advance, we remain

Very truly yours, Sealy of Cincinnati, Maurice Unger, President.

mh

enclosure

[fol. 567E] Counties in Kentucky to be Served by Memphis Plant

Allen
Ballard
Barren
Butler
Caldwell
Calloway
Carlisle
Christian
Crittenden
Daviess
Edmonson
Fulton
Graves
Grayson
Hart
Henderson
Hickman
Hopkins
Livingston
Logan
Lyon
McLean
Marshall
McCracken
Muhlenberg
Ohio
Simpson
Todd
Trigg
Union
Warren
Webster

[fol. 568E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 233

February 3, 1950

Mr. Louis Haas,
Sealy Mattress Company
1047 Florida Street
Memphis, Tennessee.

Dear Louis:

Herb. Neilson has turned over to me your letter of January 24th, and we certainly appreciate the arrangements which you have worked out with Herb.; whereby Sealy of Cincinnati is going to cover a portion of the Kentucky territory on a temporary trial basis to see what success we can have in that area.

We, also, appreciate the efforts to which you have gone to give us a list of the accounts to whom you have been selling in Kentucky, and this will assist us greatly in getting started.

We note from your letter the list of counties which you desire to retain and in this connection, so we are sure that we do not get out of bounds, we have written Roger Lawrence, as per copy attached, and, no doubt, the list of counties which he will send us will represent those counties into which we can go without fear of being out of our territory.

Again, thanking you for your cooperation in this matter, and with kind personal regards, remain

Very truly yours, Sealy of Cincinnati, Maurice Unger, President.

mh

cc: Herb. Neilson, Roger Lawrence.

[fol. 569E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 234

February 15, 1950.

Sealy Mattress Company
Oxford Road
Warren County
Franklin, Ohio

Attn: Mr. Maurice Unger

Dear Babe:

I have your letter of February 1st in which you state that while in Chicago Mr. Lottis Haas and Mr. Herbert Neilson worked out an agreement whereby Sealy of Cincinnati is going to take over, on a temporary basis, a portion of the Kentucky counties previously serviced by Sealy of Memphis. This brings up many ramifications which are not too pertinent at the present time but which may become complicated in the future.

In the first place, the franchising of territories is an exclusive right that is the property of Sealy, Incorporated. The Sealy contract specifically prohibit the re-licensing of a territory to another plant.

Secondly, Louis has offered back to Sealy, Incorporated the counties in Kentucky east of, and not including the following counties: Davies, Ohio, Butler, Warren and Allen. When this territory was released to Sealy, Incorporated, we began negotiations with the Logan Company of Louisville, Kentucky in connection with the possibility of them serving the central portion of Kentucky. At the present time, the negotiations are more or less at a standstill as the next move is up to the Logan Company. If you go into the area in central Kentucky, please understand that there can be no committments from Sealy, Incorporated toward the possibility of annexing this territory to your present one on a permanent basis. I can see no objection to your servicing it on a temporary basis, but if you go into it, please go into it with your eyes open and with full information.

In regard to the counties being served by Bluefield, Virginia, they are as follows: Morton, Floyd, Pike, Knott, Letcher, Breathit, Perry, Harlan, Leslie, Clay, Knox, Bell. [fol. 570E] The counties listed in northeastern Kentucky are, of course, in your Cincinnati contract. Your line runs through and includes the following counties: Carrol, Owen, Harrison, Nicholas, Bath, Menifee, Morgan, Magoffin, Johnson and Lawrence. If you will refer to your map, this will give you a full picture of the situation in Kentucky for there are no other plants involved. Incidentally, the counties of Floyd and Clark in the state of Indiana were also the property of Memphis and have been surrendered along with the Kentucky territory.

Please understand that Mr. Louis Haas definitely made a committment to Sealy, Incorporated regarding the release of this territory providing Sealy, Incorporated could locate a satisfactory licensee for same. Of course, any action of a permanent nature would have to have the sanction of the Board of Directors of Sealy, Incorporated.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

cc: L. G. Haas.

[fol. 571E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 235

Air Mail

January 4, 1950.

Mr. Earl Bergmann
Sealy, Inc.
2841 East 37th Street
Cleveland, Ohio

Dearl Earl:

We received Roger Lawrence's bulletin #3470 in reference to private discussions with licensees on Wednesday, January 11th. I have some problems concerning territory that I would like to discuss with you at that time.

In order to save time, I'm going to outline in this letter these various problems for your consideration. They are:

1. You will recall that when we signed with Sealy in November of 1948 that we ended up with considerably less territory than we had asked for and considerably less than the territory Roger Lawrence felt we could have when we discussed the matter with him in Waterbury. You will recall that we reached a compromise in Chicago which gave us a very small portion of Westchester County. Specifically, it is that portion of Westchester County north of a line drawn from Tarrytown to the Connecticut border not including Tarrytown. This gives us only two (2) small and unimportant towns in Westchester. The balance of the county is held by the Brooklyn plant.

   I wish to remind you that we agreed to this arrangement only after we had your promise and Roger Lawrence's promise that, if we did a good job, we could have the balance of Westchester County. I can assure you that there is very little Sealy being sold in lower Westchester County today and I know that we can do a very satisfactory job in this well populated area. We are in an excellent position geographically to service the territory and our selling organization is well [fol. 572E] equipped to take on the balance of the County.

2. Our next problem concerns the town of Newburgh, New York. This town is not in our Sealy territory as it is in Orange County which is covered by the Passaic plant. It has a population of about 31,000 and is situated on the Hudson River just a few miles outside of our territory. We sold Burgers, a furniture store, just under $20,000. of Waterbury merchandise in 1949. We are selling them about 80% of the bedding they use but we are afraid that without a national brand to offer that we may lose ground to Englander or Simmons.

   We have encouraged this account to take on Sealy from Passaic, as we felt that they would promote some branded line also, but although they have used some merchandise they have never really done a job with Sealy. I have approached Max Lewis of Passaic a few times this year to see if something could be worked out in reference to the town or the account. We have carefully watched the town and we know that the territory is not being serviced and we also know that there is very little or no Sealy being sold in the neighborhood.

   Burgers are extremely anxious to do business with us and would buy and feature Sealy if we could give it to them. Can you use your good offices to work some arrangement with Mr. Lewis of Passaic?

3. The third situation concerns our Rhode Island territory. We did not start to actively solicit business in the Rhode Island territory until April of last year because of the Osiason suit against Sealy, Inc. The state and one county in Massachusetts has been handled by S.M. Bloom, our representative, who lives in Providence, Rhode Island. In the nine (9) months of 1949 that he represented us, he did a volume of $116,000. We had, as you know, great difficulties in getting started because of the poisonous job the Osiasons had done of burning their bridges behind them. The dealers were all loaded with Sealy merchandise at cut prices and we and Sealy, Inc. had been painted as the world's blackest villains. We think that Mr.

Bloom has done an excellent job considering the circumstances.

We now wish to expand our efforts in Rhode Island and we hope to open a warehouse in Providence, in the near future. We also would like to put a junior salesman under Mr. Bloom to handle the smaller accounts. In surveying the territory and determining the amount of territory necessary to support such a warehouse, we find that Bristol County in Massachusetts is a natural part of the Providence market. If you will study the map, you will note that Fall River and New Bedford, the two (2) main towns in Bristol County, are only fifteen (15) or twenty (20) miles from Providence. You will also note, on your map, that Rhode Island is a chopped off state and that [fol. 573E] Bristol County can be properly serviced from Providence. The majority of the appliance people service this area from Providence.

I have no way of knowing the exact amount of business the Allston plant is doing in Bristol County but we do know from careful observation that it cannot be too great. We know that many of the key accounts who purchased Sealy from Osiason are not buying it from Allston. We also feel that a capable man like Mr. Bloom can, with a warehouse behind him, obtain the maximum distribution of Sealy in Bristol County.

I realize that a quick solution cannot be found to any or all of these problems but I know that as the year progresses the opportunity may arise to make some or all of these changes. I have discussed these matters with you before but I wish to again remind you of them now that 1949 is behind us. May I go over these matters with you in Chicago on Wednesday? Best regards.

Very truly yours, Sealy Mattress Company, By: William H. Walzer.

WHW:hp

cc: J.R. Lawrence, Chicago, Illinois.

[fol. 574E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 236

"Sleeping on a Sealy is like Sleeping on a Cloud"

SEALY MATTRESS COMPANY
Detroit 1, Michigan
Telephones Temple 1-4620-21-22
3818 Beaubien Street
5914 Federal Ave.
Detroit 9, Mich.

March 27, 1950.

Mr. J.R. Lawrence
Sealy Incorporated
666 Lake Shore Drive
Chicago 11 Ill.

Dear Roger:

Kindly advise me immediately the situation regarding shipping of Sealy merchandise into the State of Florida, particularly into the Miami area. You know by now that we have a pretty fair connection re shipments of merchandise into Miami and also South America and Cuba. We are now working on a couple of deals for hotels and hospitals in the Miami area and would like permission to go ahead with these on the basis of shipping them Sealy merchandise.

We know for a fact that Sealy Inc. itself would have no chance of obtaining these orders because of our connection, and we ourselves, can sell Brown P[illegible]able instead of Sealy, however, for the small cost to us involved by putting the Sealy label on the merchandise, we feel we are lending a lot of prestige to Sealy Inc. by doing so.

Kindly give us the "go ahead" sign on the above matter.

Yours truly, Sealy Mattress Company, Peter D. Brown.

PDB:rm

[fol. 575E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 237

March 31, 1950.

Sealy Mattress Company
5914 Federal Avenue
Detroit, Michigan

Attn: Mr. Peter D. Brown

Dear Pete:

The state of Florida is under franchise to the U. S. Bedding Company, Memphis, Tennessee and Sealy, Incorporated can not give you permission to ship Sealy merchandise into that area, I believe the Memphis plant is fairly active in the state of Florida. They have warehouses located in Miami, Jacksonville and Tampa.

As far as Cuba and South American are concerned, you have our permission to ship Sealy merchandise to these points.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 576E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 238

May 12, 1950.

Sealy Mattress Company
5810 S. Normandie Avenue
Los Angeles, California

Attn: Mr. Seniel Ostrow

Dear Mr. Ostrow:

We are enclosing herewith new amendments to your contract. These amendments embrace the territory as set up in your recent letter to me. We are enclosing an original and one copy which we ask that you please execute and return to this office. When these have been executed by Sealy, Incorporated, we will return one copy for your files.

We ask that you please attend to this matter promptly in order that the corporation records may be brought up to date.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:r

[fol. 577E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 243

SEALY INCORPORATED

Inter Factory Correspondence

To J. R. Lawrence

From E. H. Bergmann
Date June 27, 1950
Subject—

Dear Roger:

I am enclosing a letter dated June 12th received from Bill Walzer which sets forth the arrangements concerning the occupancy of Newburgh, New York and other territories.

Since our meeting in Chicago of course you understand that Max Lewis told me personally that as far as he was concerned, he was willing to go beyond the understanding with Bill Walzer and Mike Yulman and give Yulman the entire county of Sullivan and Walzer the entire county of Orange. Of course, I let him feel that he was a generous giver even though we had no intention of giving him the counties anyway.

This letter states a couple of other little changes necessary in order to permit Waterbury to enter into Newburgh and, so far as I can tell, it seems to be in order but you will have to cover it by a letter of stipulation to the plants concerned.

Regards.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:r

[fol. 578E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT 243A

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Waterbury, Connecticut
Telephone 3-5109
79 Benedict Street

Mr. Earl Bergmann
Sealy Inc.
2841 East 37th St.
Cleveland, Ohio

June 12, 1950.

Dear Earl:

I saw Mr. Max Lewis of Passaic at the meeting of the Eastern Plants which we held in New York last week, and I worked out an arrangement with Max concerning the Orange County situation.

Max has agreed to give us Newburgh, N.Y., commencing on July 1, 1950. He wants to retain the balance of Orange County and we are perfectly willing to go along with him under this arrangement.

Mike Yulman has also agreed to a territorial change in order that we may service Newburgh without going through his territory. He has very kindly consented to give us that portion of Duchess County, N.Y., which is south of an imaginary line from Wappinger Falls, N.Y., to Wingdale, N.Y. These two towns will be in our territory. We now have Putnam County, N.Y., as you know, and if Mike had not given us this small strip of Duchess County we would have been unable to regulate the distribution of Sealy in Beacon, N.Y., which is across the river from Newburgh, and a part of the Newburgh trading area.

We believe that these changes will be of great benefit to all concerned. Will you please see that the necessary contractual arrangements are made for this territory revision.

Best regards, Sealy Mattress Company, William H. Walzer.

WHW:dj
CC:ML, MHY

[fol. 579E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 244

Sealy Mattress Company,
79 Benedict Street,
Waterbury 89, Conn.

June 29, 1950.

Attention: Mr. William Walzer

Dear Bill:

Mr. Bergmann has forwarded to me your letter of June 12th in regard to territory changes in and around Newburgh, New York. Also, I notice that part of the territorial changes involve Schenectady so I am sending a copy of this letter to the attention of Mr. Mike Yulman.

I note that Mike has agreed to give you a portion of Duchess County which is south of an imaginary line from Wappinger Falls, to Wingdale, N.Y. These two towns will be included in the territory obtained from Schenectady.

As I told you at a meeting in Chicago, you may service the entire county of Orange, in fact, we will expect one of your men to work the accounts in that county and to make a good showing and not concentrate all of your shots on the city of Newburgh.

As you know, Passaic also worked the county of Sullivan, or at least it was in their contract. This county is now being turned over to Schenectady as it is adjacent to the county of Ulster which they are now working. The major towns in Sullivan County are Monticello, Liberty, Livingston Manor and Roscoe.

I do not see any necessity of issuing a new contract for this territorial change and if you will file this letter with your contract, it will serve the official purpose of adding this territory to your contract.

I sincerely trust that you will do a good business in Orange County and that Mike Yulman will do a good business in Sullivan County. The reason these counties were taken out of the Passaic contract is that they were not being sold in any volume, although Mr. Max Lewis did state that he had shipped some Sealy merchandise into that area.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:if

cc: Schenectady.

[fol. 580E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 246

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Portland 10, Oregon
Telephone Beacon 1106
2337 Northwest York Street

August 1, 1950.

Mr. Earl H. Bergmann
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Dear Earl:

I meant to write you before about this but have more or less overlooked it. As you know we have been developing trade in the Alaskan Territory and are selling from time to time Sealy Products in that Territory. Some few years ago when this came into being and when Mr. Haas was still alive I took this matter up with Mr. Haas and he advised me to go ahead and cover Alaska with Sealy Products. We have been doing that since then and up to this time you have not officially included that in our territory and I would appreciate greatly that at your next meeting that you take this matter up and add this territory to our contract because we are expending funds and efforts to develop the business in that territory and would like to have it added to our contract.

Your attention in this matter will be much appreciated by me.

Sincerely yours, Sealy Mattress Company, Ben Rosenfeld.

BR:mc

[fol. 581E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 247

Dict. 8/18/50.
August 21, 1950

Sealy Mattress Company
2337 N. W. York Street
Portland, Oregon

Attention: Mr. Ben Rosenfeld

Dear Ben:

I acknowledge receipt of your letter concerning the Alaska territory and I have been giving considerable thought to it and have been doing some investigating concerning the territory.

I find, much to my surprise, the population of Alaska to be in excess of 100,000 people and that they seem to have an extremely high buying power per capita.

Of course, I am familiar with the fact that Alaska is seeking statehood and the day may not be too far off when this particular territory will become a very valuable and important part of the United States. Therefore, it may, within itself, be able to support a full licenseeship possibly not without a plant but the status of a licenseeship on the part of who ever may be handling it for Sealy.

I think the proper way to handle this Alaskan territory would be to give it to you on a separate contract subject to the usual 3% handling with say a minimum of $100 per month for the first three years and then as the contract comes up for renewal we will be able to determine whether or not the royalty should go up so far as the minimums are concerned at time of renewal. By your reporting your Alaskan sales separately we would be able to determine as to the value of the territory and the minimums could be predicated accordingly.

If you feel that the suggestion of the separate contract with the minimum of $100 a month is in line with your

[fol. 582E] thinking please advise me and I will submit to the Board on the occasion of the meeting in Denver this suggestion.

Ben, I am looking forward to seeing you in person on the occasion of this meeting in Denver and I am sure you are going to be there because it is about half way to your home and we are going to have quite a number of things to discuss and also a little time to relax together and get acquainted personally with each other more than we have in the past.

Personal regards, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 583E] In United States District Court

Government's Exhibit No. 248

November 16, 1950.

Pettit Bedding Company
2337 Northwest York Street
Portland 10, Oregon

Attention: Mr. Ben Rosenfeld

Dear Ben,

We are enclosing herewith an executed copy of an agreement between Sealy, Incorporated, and the Pettit Bedding Company covering the Territory of Alaska. This contract is dated October 30, 1950, and is for a three year period beginning November 1, 1950 and expiring October 31, 1953. We trust that you will find the papers in order.

Please accept our good wishes for your continued success in that area, and be assured of the full cooperation from this office in any way that we can be of help to you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JEL/ba

Encl.

[fol. 584E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 248-A

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Des Moines 8, Iowa
Telephone 3-5165
301-325 Southwest 8th Street

July 26, 1950

Sealy, Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Gentlemen:

Several days ago, Mr. Harry Fouts wrote a letter to President Earl, listing some counties in South Dakota, which the Des Moines plant was willing to relinquish to the St. Paul plant. No doubt Earl will handle this in a formal manner, inasmuch as the proper procedure would be for Sealy Incorporated to authorize the St. Paul plant to work that particular territory.

We give you herewith, the counties which we are relinquishing, and we also are listing those counties in South Dakota which we are retaining.

Counties in South Dakota Relinquished

Bennett	Aurora
Todd	Davison
Trip	Hanson
Gregory	McCook
Washabaugh	Minnehaha
Melett	Rosebud
Brule	

Counties in South Dakota Retained

Douglas	Charles-Mix
Hutchinson	Bonne Homme
Turner	Yankton
Lincoln	Clay
Lyman	Union

There are three names on your master mailing list which have been under the Des Moines plant, which we kindly ask [fol. 585E] that you remove. No doubt the St. Paul plant will send you their list of names to be included in the master mailing list. From the Des Moines drawer, you will please remove the following names:

Johnson Furniture Co., Sioux Falls, S. Dak.
Johnson Furniture Co., Mitchell, S. Dal.
J. J. Hofer & Son, Emery, So. Dak.
(Taken off m. list 8/4/51, IF)

Yours truly, Sealy Mattress Company, H. N. Ryden, Vice President.

HNRyden:dc

cc: Sealy Mattress Co., St. Paul 4, Minn.

[fol. 586E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 250

November 8, 1950

Taff Furniture Store
Rushville
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 587E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes, Louisville, Kentucky.

[fol. 588E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 251

Louisville territory

October 30, 1950

Taff Furniture Store
Rushville
Indiana

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

We do not sell the "Orchid" line but we would like to offer you the opportunity to buy our regular line-up of fine Sealy merchandise. Enclosed is a complete price list and catalog covering our bedding line.

After you digest same, it may be your desire to show our upholstered goods, prices of which are enclosed. If such is the case, please write for our 1950 swatch book, which will be sent you at a cost of $7.50.

Also enclosed is a typical mailing piece which illustrates some of our merchandising thinking and covers five newspaper ads which we ran last spring, at absolutely no cost to our dealers.

On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 589E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 252

November 8, 1950

McDaniel Furniture Company
Bloomington
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firm as the U. S. Testing Laboratories, to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 590E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JHL/ba

cc: Mr. Harry Forbes, Louisville, Kentucky

[fol. 591E] In United States District Court

Government's Exhibit No. 253

Louisville territory

McDaniel Furniture Company
Bloomington
Indiana

October 30, 1950

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

We do not sell the "Orchid" line but we would like to offer you the opportunity to buy our regular line-up of fine Sealy merchandise. Enclosed is a complete price list and catalog covering our bedding line.

After you digest same, it may be your desire to show our upholstered goods, prices of which are enclosed. If such is the case, please write for our 1950 swatch book, which will be sent you at a cost of $7.50.

Also enclosed is a typical mailing piece which illustrates some of our merchandising thinking and covers five newspaper ads which we ran last spring, at absolutely no cost to our dealers.

On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 592E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 254

November 8, 1950

Guttman Furniture Company
Connersville
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories, to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 593E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes, Louisville, Kentucky.

[fol. 594E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 255

Louisville territory October 30, 1950

Guttman Furniture Company
Connersville
Indiana.

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

We do not sell the "Orchid" line but we would like to offer you the opportunity to buy our regular line-up of fine Sealy merchandise. Enclosed is a complete price list and catalog covering our bedding line.

After you digest same, it may be your desire to show our upholstered goods, prices of which are enclosed. If such is the case, please write for our 1950 Swatch Book, which will be sent you at a cost of $7.50.

Also enclosed is a typical mailing piece which illustrates some of our merchandising thinking and covers five newspaper ads which we ran last spring, at absolutely no cost to our dealers.

On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 595E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 256

November 8, 1950

Droege Furniture Company
Seymour
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago, to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories, to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 596E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes.

[fol. 597E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 257

Louisville. October 30, 1950.

Droege Furniture Company
Seymour
Indiana

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

We do not sell the "Orchid" line but we would like to offer you the opportunity to buy our regular line-up of fine Sealy merchandise. Enclosed is a complete price list and catalog covering our bedding line.

After you digest same, it may be your desire to show our upholstered goods, prices of which are enclosed. If such is the case, please write for our 1950 Swatch Book, which will be sent you at a cost of $7.50.

Also enclosed is a typical mailing piece which illustrates some of our merchandising thinking and covers five newspaper ads which we ran last spring, at absolutely no cost to our dealers.

On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 598E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 258

November 8, 1950.

Dickhoff & Vance
North Vernon
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Stret, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories, to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 599E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes.

[fol. 600E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 259

Louisville territory

Diekhoff & Vance
North Vernon
Indiana

October 30, 1950.

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

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On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 601E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 260

November 8, 1950.

Cure & Son
Martinsville.
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories, to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 602E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes.

[fol. 603E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 261

Cure & Son
Martinsville
Indiana
Louisville

October 30, 1950.

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

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Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 604E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 262

November 8, 1950.

Giltz Furniture Store
Brazil
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 605E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes.

[fol. 606E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 263

Louisville territory October 30, 1950

Giltz Furniture Store
Brazil
Indiana

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

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On mattresses and boxsprings in less than truckload lots, our prices are f.o.b. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you f.o.b. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 607E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 264

November 8, 1950

Buchanan-Jones
Columbus
Indiana

Gentlemen:

On October 30 our Chicago factory wrote to you, through error, that they were servicing the territory, in which you are located, with Sealy merchandise. This letter is being written to you from the National Sales Office in Chicago to correct this error and to advise you that Sealy bedding products are sold and serviced in Southern Indiana by the Logan Company, 1115 Franklin Street, Louisville, Kentucky.

The Charles A. Maish Company of Cincinnati, Ohio has closed their plant because of labor and management difficulty. We believe that you will find the Logan Company an excellent source for your bedding needs. They have been in the bedding manufacturing business for over fifty years and have a very good reputation for integrity and fair dealing with their customers.

Sealy engineers have set up the Logan plant to manufacture the fine line of Sealy bedding products. Each Sealy product is manufactured to very rigid specifications and are made of raw materials available through the National Sealy organization. Sealy products manufactured by each of the Sealy associates are examined periodically by such firms as the U. S. Testing Laboratories to insure that the products live up to the fine reputation of the Sealy name.

Mr. Harry Forbes is the sales manager of the Logan [fol. 608E] plant, and we feel sure that you will find him and his associates pleasant people to do business with and a profitable connection for you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence, Executive Vice-President.

JRL/ba

cc Mr. Harry Forbes.

[fol. 609E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 265

Louisville territory

October 30, 1950.

Buchanan-Jones
Columbus
Indiana

Gentlemen:

Please be advised that the Chicago factory of Sealy has been assigned nine additional counties in Indiana, including the one in which your store is located. This territory was formerly serviced by the Charles A. Maish Company of Cincinnati, Ohio, and it is our understanding that they merchandised with you what they called their "Orchid" mattress and boxspring line.

Our merchandising ideas differ from theirs, as also does our merchandise. You will find our merchandise unexcelled in quality, and our reputation for integrity, service, advertising and merchandising ideas second to none in the middle west.

We do not sell the "Orchid" line but we would like to offer you the opportunity to buy our regular line-up of fine Sealy merchandise. Enclosed is a complete price list and catalog covering our bedding line.

After you digest same, it may be your desire to show our upholstered goods, prices of which are enclosed. If such is the case, please write for our 1950 Swatch Book, which will be sent you at a cost of $7.50.

Also enclosed is a typical mailing piece which illustrates some of our merchandising thinking and covers five newspaper ads which we ran last spring, at absolutely no cost to our dealers.

On mattresses and boxsprings in less than truckload lots, our prices are F.O.B. Chicago. In straight trailerloads (approximately 93 pieces) our merchandise comes to you F.O.B. delivered your store.

Trusting that we may be of service to you, we are

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

[fol. 610E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 266

SEALEY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 6-4371
8 South Harvie Street

January 16, 1951.

Mr. J. R. Lawrence
c/o Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I have our communication of January 10th in which you notify me that the Maryland Bedding Company, Baltimore, Maryland has taken on the Sealy franchise as of January 1, 1951. Frankly I am pleased that you have a licensee in Washington and Baltimore and I hope that they will do a good advertising business in this area. If so, they will eventually be helpful to the Richmond factory.

There is only one request I would like to make of Sealy in reference to the above and that is the question of the Manassas Furniture Company, Manassas, Virginia. This is a very good account of ours and if you will look at the map, I believe that you will agree with me that it should logically be in the Richmond area. It is only about 75 miles from Richmond and very close to Fredericksburg which we serve regularly. I would like to have a reply from you in reference to Manassas.

With kindest regards, we remain

Sincerely, Sidney Sutherland, Sealy Mattress Company.

SS:mp

[fol. 611E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 267

February 7, 1951.

Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Attention: Mr. Sidney Sutherland

Dear Sidney,

As far as this office is concerned you can continue to serve the Manassas Furniture Company of Manassas, Virginia. I have a letter from the Maryland Bedding Company acknowledging your service of the account.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/ba

[fol. 612E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 268

April 22, 1952.

Mr. Joseph Rudick
Sealy Mattress Company
617 W. Pratt Street
Baltimore 1, Maryland

Dear Joe:

I was looking over the map on Virginia outlined in the Richmond territory and Baltimore territory. After looking at the map and the contract this thought hit me and I am taking the opportunity of writing you to see what you think of the situation and see if you feel that it is an equitable swap. I know that the Baltimore area has all of the Maryland territory and Delaware territory on the Eastern Shore and I presume that you are working regularly and getting a fair amount of business out of Kenbridge, Salisbury, Dover, Princess Anne, Snow Hill, Pocomoke, etc. If you are working this area, which I have outlined it seems that it would be a good idea for you to work the two Virginia Counties that fill out the rest of the Eastern Shore, namely; the Counties of Northhampton and Accomack.

Frankly, we have not worked these two Eastern Shore Virginia counties regularly and it is very hard for our man to get to this territory from Richmond. Whereas your man working Maryland and Delaware Eastern Shore could very readily continue on down into the two Virginia counties.

In reference to a swap for this territory I thought that you would possibly relinquish to Richmond, Prince William and Fauquier county in Virginia [Fauquier Rappahanack]. In reference to Prince William County the main town in Prince William is Manassas which was granted to Richmond before you signed your Baltimore contract due to the fact that we had worked up a good account with the Manassas Furniture Company. Then the county of Fauquier in which the only town worth while mentioning is Warrenton which is somewhat nearer to Richmond than Manassas. If

you will check the published population of the two counties in Virginia which I am swaping with you of Prince William and Fauquier you will find that the population is about equal. If you are willing to consent to this please drop me a [fol. 613E] line and I know that I can write to Earl Bergmann and get Sealy to agree to the swap between you and ourselves. Please give this matter your consideration as I believe it would be a good move on the part of both of us expecially if you are working the Eastern Shore territory. And, if you are not working it at present I know as you develope and spread out in your area you will definitely work Eastern Shore. Eastern Shore is good territory, lot of money at certain times of year and good business.

Thank you for any consideration that you may give this proposition and when you make up your mind whether or not you are interested I will be pleased to hear from you. In the meantime I hope that business is going along good with you and that it will continue so.

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

[fol. 614E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 269

April 23, 1952.

Mr. Joseph Rudick
Sealy Mattress Company
617 W. Pratt Street
Baltimore 1, Maryland

Dear Joe:

Further reference to our telephone conversation this morning in which you stated that you were calling Roger Lawrence immediately in reference to the Manassas Furniture Company account, I have in my files attached to my contract a letter dated February 7, 1951 signed by Sealy, Incorporated, J. R. Lawrence which reads as follows:

"As for as this office is concerned you can continue to serve the Manassas Furniture Company, Manassas, Virginia. I have a letter from the Maryland Bedding Company acknowledging your service of the account."

Of course, as I stated to you on the telephone I did not request the whole town of Manassas, Virginia but simply stated that we wanted the Manassas Furniture Company due to the fact that we were not selling any other account in Manassas and I do not believe that it would be quite fair for you to sell the other account in Manassas.

I again call your attention to my former letter in which we offered to swap the two Eastern Shore Counties in Virginia for the Counties of Fauquier and Prince William.

With kindest regards and best wishes, we remain

Sin-"Sealy" yours, Sidney Sutherland Sealy Mattress Company

SS:mp

[fol. 615E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 270

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Baltimore 1, Maryland
Phone Mulberry 5-2897
617-619 West Pratt Street

May 5, 1952.

Mr. Roger Lawrence
Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Ill.

Dear Roger:

We are waiting patiently to get a copy of letter that you were supposed to send Sidney Sutherland in Richmond, Virginia straighting out our Virginia and West Virginia territory especially this Manass, Virginia business.

I'm sure you understand what we are up against here and I'm sure Sidney will too if presented correctly.

Please get this off to us immediately so that we can be sure that we will have no more trouble along these lines.

Thank you for your cooperation.

Sin"Sealy" yours, Sealy Mattress Co. Joseph Rudick.

JP:eo

Please send detail on how Golden Sleep will be presented. Also can this be preticketed, and what retail price is to be set. I am anxious for information.

[fol. 616E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 271

May 7, 1952.

Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Attention: Mr. Joseph Rudick

Dear Joe:

Before getting into the real meat of this letter I want to answer you on a couple of inquiries you made to this office. One is regarding the pre-ticketing of the Golden Sleep Promotion. If you will note our specifications dated April 30th, there is no pre-ticketing allowed. The advertised price of the mattress will be $39.50 and will carry a comparative line such as "Save exactly $20.00".

Another thing is that I will send you a copy of the N.A.B.M. release on CPR order number 7 as soon as I get additional copies from them.

In regard to the controversy you have had with the Richmond plant over the representation in some of the northern counties of Virginia, I will say that I have dug into the matter further and find that it is not as simple as I first thought when I talked to you over the 'phone. In the first place, it seems that all of the controversy narrows down to one account in Manassas, Virginia; namely, the Manassas Furniture Company.

It is true that Manassas, Virginia is in Prince William County listed in your contract. However, you wrote me in late January or early February stating that as far as you were concerned the Richmond plant could continue to serve that particular account. I can realize that at the time your letter was written, circumstances were somewhat different, and probably you had in mind that it would be all right for Richmond to service that area until such time as you had active representation down that way. You must realize,

though, that it is difficult for Richmond to withdraw from that account when he is working quite a distance ahead on promotions with them. I know definitely that he had a May promotion already scheduled and sold before you raised the question.

[fol. 617E] I have a copy of a letter that Sidney Sutherland wrote to you on April 22nd in which he suggested a swap in the territory of Richmond and Baltimore as it is presently conceived. He would like to have you take over the counties of Northhampton and Accomack. In relinquishing these counties, he would like to have in return, Prince William and Fauquier county in Virginia. Actually, the potentiality of the two counties are almost identical, as well as the population being about equal. I can't sit here in Chicago and know whether it is better for you to serve that area than Richmond or vice versa, but I will say that the suggestion from Sidney Sutherland does sound logical and if it has merit, I would like to have your cooperation in working out a swap that might be best for all parties concerned.

I am in the process of preparing a new contract for the Richmond territory, and I would like to have your immediate advice on this matter so that if any changes are necessary in outlining the territory in the Richmond contract, I will be able to do it before sending this contract to Mr. Sutherland.

Awaiting your early reply,

Yours sincerely, Sealy, Incorporated, J. R. Lawrence.

JRL:ht

cc: Sidney Sutherland.

[fol. 618E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 272

Dict. 5/9/52.
May 12, 1952.

Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Attention: Mr. J. Rudick

Dear Joe:

I have been noticing the letters passing between you and Mr. Sutherland and between you two gentlemen and Roger Lawrence concerning a couple of little counties that actually do not amount to anything.

I am inclined to agree with Roger that I think it might not be a bad idea for you to agree to the swap that Sidney has offered to you. The buying potential of the four counties in question is almost the same and I can readily see where the Richmond plant can hardly get merchandise into Northhampton and Accomack whereas you could.

Since Sutherland has been working this territory which is under question for some time, namely, one little account in Manassas, Virginia, a swap might be a nice way to keep peace and harmony within the family.

Actually, Joe, if you chew all the business that there is to be had in Baltimore and Washington, you'll have more than you can say grace over.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

cc: Sidney Sutherland.

[fol. 619E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 273

Dict. 5/26/52.
May 28, 1952.

Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Attention: Mr. J. Rudick

Dear Joe:

I have not answered your letter of the 17th and the other discussions that we had for the reason that I wanted to first receive a letter from Mr. Sutherland. I called him immediately that day and he said that he would get in touch with Mr. Gray of the Manassas Furniture Company and ask him to cease the advertising immediately as you related it to me.

He sent me a copy of the letter that he wrote to Mr. Gray on this subject, but he said that he would like to hold the matter of the final decision of the account until he had an opportunity to discuss this with me in person in Chicago.

I have written to him that I would be very happy to discuss it with him alone or with you, but that I felt there was only one solution to the problem, and that was, that two licensees could not work one county and, therefore, the licensee who had the county in his contract would have to be the one to perform the necessary servicing of the accounts.

Undoubtedly you may want to discuss this matter further with me also next month, and if you do, I would be very happy to discuss it with you.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 620E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 274

Dict. 6/17/52.
June 19, 1952.

Sealy Mattress Company
617 West Pratt Street
Baltimore, Maryland

Attention: Mr. Joseph Rudick

Dear Joe:

This is a very short letter to confirm to you the fact that Mr. Sidney Sutherland has agreed to discontinue the sale of any merchandise or the performing of any service for the Manassas Furniture Company.

I am sure that this will be good news to you and I hope it closes the matter to the complete satisfaction of both of the Sealy plants concerned.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

cc: Mr. Sidney Sutherland.

[fol. 621E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 275

SEALY COMPANY OF THE SOUTHEAST

1047 Florida Street—Memphis 2, Tennessee
Telephone 35-1631

Sleeping on a Sealy is like Sleeping on a Cloud

February 20, 1951.

Sealy, Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Roger,

This is just a reminder to let us know as quickly as possible just what our boundary lines are on the Illinois territory. You will recall I discussed this with you when you were here.

Best regards,

Yours sincerely, Sealy Company of the S. E., Linda Ballard.

LB/s

[fol. 622E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 276

February 23, 1951.

Sealy Mattress Company
1047 Florida Street
Memphis 2, Tennessee

Attention: Miss Linda Ballard

Dear Linda,

Within the next week or ten days we will send to each plant a complete list of their territory showing the counties in each state that is in their contract as well as the potential buying power of each county. The figures used in the listing are taken from the Sales Management Survey published April, 1950.

Meanwhile, in answer to your question regarding your boundary in the State of Illinois my records show that you have up to and including the following row of counties: Hancock, Schuyler, Mason, Logan, Christian, Shelby, Moultrie, Coles, and Edgar.

Please let me know where or not this checks with your records.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/ba

[fol. 623E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 277

SEALY COMPANY OF THE SOUTHEAST

1047 Florida Street—Memphis 2, Tennessee
Telephone 35-1631

Sleeping on a Sealy is like Sleeping on a Cloud

March 1, 1951.

Sealy, Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Roger,

Thanks very much for your letter of February 23 listing the counties in Illinois which form our Northern boundary.

I have checked our maps, and the counties you list are the ones we have marked on the maps—although I don't know just where the information was obtained as they do not agree with those counties listed in the old contract we have here. However, far be it from me to worry about a situation when everybody is happy, and apparently in this case no one is poaching on the other man's territory.

Thanks again for sending the list to me.

Best regards,

Yours sincerely, Sealy Company of the S. E., Linda Ballard.

LB/s

P. S. Wally Haase was in the office the day after you were here and was asking about you. I told him you and he just missed each other by a small margin.

L.B.

[fol. 624E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 278

SEALY COMPANY OF THE SOUTHEAST

1047 Florida Street—Memphis 2, Tennessee
Telephone 35-1631

Sleeping on a Sealy is like Sleeping on a Cloud

February 22, 1951.

Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Attn: Mr. Roger Lawrence

Dear Roger:

When I was in Chicago, I told you I would officially advise you that we had surrendered Evansville, Indiana to the Louisville plant. This is your official information although I presume that Louisville has been working Evansville ever since we gave them the information at market.

I would certainly suggest that you check up on this particular situation.

Yours sincerely, Sealy Company of the S.E., Louis G. Haas.

LGH/kr

[fol. 625E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 279

Sealy Mattress Company
Front & Chestnut Streets
Reading, Pennsylvania

Dict. 3/24/51.
March 27, 1951.

Attention: Mr. T. C. Engelhardt

Dear Ted,

It was a pleasure to speak to you by telephone on March 20, and I was surprised to learn that your special stockholders meeting was not to be held until March 21 because for some reason I had it in my mind that it was on the fourteenth, the same day we were in Kansas City. Be that as it may, I hope that the meeting came off as scheduled on the twenty-first and that no contentions arose and that the proposal went through according to plan and that you and your son now are the sole owners and directors of the former Fred G. Hodges Bedding Company.

As I discussed with you on the telephone we have a licensee interested in taking on the Philadelphia territory and in order to round out a territory for him that will fit into his present operations it is going to be necessary for us to give him the county in New Jersey which embraces the City of Trenton from the present Passaic contract.

In order that we may tie into this county correctly and give him a straight run to Trenton I want to include in his territory two counties which have been serviced by the Reading plant during the past. These two counties are Montgomery and Buck.

I am pleased to have you tell me that you felt that it would be possible for this change in the territory to be worked out with Philadelphia and I would appreciate having you write me and advise me that you have no objection to the placing of these two counties in the new proposed Philadelphia licenseeship. I may be in and around Reading sometime within the next two weeks, and if I should find myself in that vicinity on other business I will make it a point to call on you.

[fol. 626E] Please direct your reply to this letter to my

new office, Sealy Incorporated, 633 Third Street N. W., Massillon, Ohio.

Personal regards, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 627E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 280

Sealy Mattress Company
Front & Chestnut Streets
Reading, Pennsylvania

Dict. 4/12/51.
April 13, 1951.

Attention: Mr. T. C. Engelhardt

Dear Ted,

I want to acknowledge receipt of your letter of April 5 and thank you for your good wishes to me on my assuming a full time responsibility with Sealy and Posture. I again want to thank you for your offer of full cooperation with me in our future endeavors.

In referring to your letter of April 5 I note what you say in the third paragraph about the Montgomery and Bucks counties in the Philadelphia territory with the exception of a few cities. You state in the schedule of counties attached to the letter that these cities show by the dotted lines drawn through said counties. I do not have that map and therefore I cannot tell exactly where these towns are, but what I want to do is to give the entire Montgomery and Buck counties to Philadelphia so as to round out their territory and I wish you would govern yourself accordingly. I am quite sure that these few little towns will not make too much difference to you and it is going to make a tremendous difference to me and to Philadelphia to get them started with a full compliment of territory.

. . . . . .

[fol. 628E] Personal regards, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 629E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 281

Dict. 5/21/51.
May 23, 1951.

Sealy Mattress Company
Front & Chestnut Streets
Reading, Pennsylvania

Attention: Mr. T. C. Engelhardt

Dear Ted,

I want to acknowledge receipt of your letter of May 15 and to tell you that I realize that on your list of counties which you received under date of March 1 that there were a number of counties which had not previously been assigned to the Reading territory.

You, undoubtedly, note in the contract that you have received that we have included these counties as part of your territory and we are happy to give them to you and it is my thought that they will more than justify the exclusion of the few cities that you have covered in Montgomery and Bucks counties.

Under separate cover you will recieve a bulletin issued here from Massillon, Ohio to the licensees on the Eastern Seaborad telling them that I am coing to have a special meeting with the Eastern group in the Commodore Hotel on May 31. I hope that you will find it convenient to be there, and I am quite sure that you will be able to return home the same evening. If you can come up I am quite sure that we will have sufficient time to clean up any matters concerning the contract before you return home that evening.

Personal regards, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 630E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 282

Dict. 6/5/51.
June 6, 1951.

Pending

Mr. J. R. Lawrence
Chicago, Illinois

Dear Roger,

Ted Engelhardt and I discussed at considerable length the matter of a revised contract for the Reading territory other than that which we originally sent to him.

Mr. Engelhardt feels that he is actively interested in only the following counties: Adams, Berks, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Luzerne, Northampton, Schuylkill, and York.

I have computed the potential buying power of these counties and I find it to run approximately 1.38%. On this basis applied against the total sales of the Sealy plants for 1950 we find that a 3% royalty would indicate a total royalty from that territory of approximately $7,200 yearly. Inasmuch as the Board is insisting upon a 50% minimum it would mean that this territory would eventually produce approximately a minimum royalty of $300 a month on the basis of 50% of the potential total.

Mr. Engelhardt and I have discussed this new minimum figure and we have agreed on the following handling. For the first year Mr. Engelhardt is to pay 3% on his Sealy sales and nothing on his private sales with a minimum of $150 per month. For the next six months it would be 3% on Sealy and 1% on private with $175 minimum. The next six months will remain 3% on Sealy and 1% on private with a $200 minimum. The next six months will be 3% on Sealy, 2% on private with $225 minimum and for the next six months the minimum per centage remains the same but the minimum dollars go to $250 per month. Thereafter, the per

centage of royalty will be 3% on both Sealy and private brand goods and the minimum per month will be $300.

Will you please issue to the attention of Mr. Engelhardt a new contract on this basis and Mr. Engelhardt promises to return it to us in sufficient time for the meeting of the Board on Friday of next week.

Regards, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

cc: Mr. T. C. Engelhardt Reading, Pennsylvania,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 238

UNITED STATES, APPELLANT,

vs.

SEALY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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Government's Exhibits—Continued	Original	Print
No. 324—Letter dated October 29, 1954 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	688E	620
No. 325—Inter Factory Correspondence of Sealy, Incorporated, dated January 12, 1955 from J. R. Lawrence to Mr. Johnson	689E	621
No. 326—Letter dated January 26, 1955 from J. R. Lawrence of Sealy, Incorporated to Mr. Joseph F. Haas of Haas, Holland & Blackshear, Atlanta, Ga.	690E	622
No. 327—Letter dated June 9, 1956 from Peter D. Brown of Sealy Mattress Company to Mr. Earl Bergmann of Sealy, Incorporated, Chicago, Ill.	691E	623
No. 328—Letter dated June 12, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. M. A. Kaplan of Sealy Mattress Company, Chicago, Ill.	692E	624
No. 329—Letter dated June 15, 1956 from Morris A. Kaplan of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	693E	625
No. 330—Letter dated December 4, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Kansas City, Mo.	694E	627
No. 331—Letter dated January 14, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Edgar Haas, Sr. of Slumber Products Corporation, Memphis, Tenn.	695E	628
No. 332—Letter dated January 19, 1953 from Ross S. Rosenberg of Sealy Mattress Company to Sealy Mattress Company (excerpts)	697E	630
No. 333—Letter dated January 14, 1953 from Morris A. Kaplan of Sealy Mattress Company to Mr. Ross Rosenberg of Sealy Mattress Company, St. Paul, Minn.	699E	631
No. 334—Letter dated January 27, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. H. L. Forbes of Sealy Mattress Company, Louisville, Ky.	702E	633
No. 335—Letter dated January 28, 1953 from Harry L. Forbes to Mr. J. R. Lawrence of Sealy, Inc., Chicago, Ill.	703E	634
No. 336—Letter dated June 26, 1953 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Sealy Incorporated, Chicago, Ill.	704E	635

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 337—Letter dated June 29, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy of the Carolinas, Lexington, N.C.	705E	636
No. 338—Letter dated July 9, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc.	706E	637
No. 338-A—Letter dated July 8, 1953 from H. B. Fouts of Sealy Mattress Company to Mr. Jules Shapiro of Central Mattress Company, Omaha, Nebraska	707E	638
No. 339—Letter dated July 13, 1953 from Edgar C. Haas of Slumber Products Corporation, to Sealy, Incorporated, Chicago, Ill.	708E	640
No. 342—Letter dated September 16, 1953 from J. R. Lawrence of Sealy, Incorporated to Mr. Edgar Haas of Sealy Mattress Company, Memphis, Tenn.	709E	641
No. 343—Letter dated September 29, 1953 from Robert B. Conover of Slumber Products Corporation to Mr. J. R. Lawrence of Sealy, Incorporated, Chicago, Ill.	710E	642
No. 344—Letter dated October 13, 1953 from E. H. Bergmann of Sealy, Incorporated to Mr. Robert B. Conover of Sealy Mattress Company, Memphis, Tenn.	711E	643
No. 345—Letter dated July 23, 1953 from E. H. Bergmann to Mr. J. R. Lawrence with an enclosure of memorandum dated July 10, 1953 from J. R. Lawrence to E. H. Bergmann	712E	644
No. 346—Letter dated October 9, 1953 from C. B. McGillivray of Sealy Mattress Company to Mr. Marcus Haas of Sealy Mattress Company, Memphis, Tenn.	714E	646
No. 347—Letter dated January 25, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va.	716E	648
No. 348—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Incorporated, Cleveland, Ohio	717E	649
No. 349—Letter dated January 27, 1954 from Sidney Sutherland of Sealy Mattress Company to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	718E	651

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 350—Letter dated January 27, 1953 from Joseph Rudick of Sealy Mattress Company to Mr. Sidney Sutherland of Sealy Mattress Company, Richmond, Va.	719E	652
No. 355—Letter dated January 28, 1954 from Joseph Rudick of Sealy Mattress Company to Mr. Irving Fisher of Sealy Mattress Company, Chester, Pa.	720E	653
No. 356—Letter dated February 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Joseph Rudick of Sealy Mattress Company, Baltimore, Md.	721E	654
No. 357—Letter dated June 4, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Earl H. Bergmann, Sealy Incorporated, Chicago, Ill.	722E	655
No. 358—Letter dated June 16, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Co., Baltimore, Md.	723E	656
No. 359—Letter dated June 15, 1954 from J. R. Rudick of Sealy Mattress Company to Mr. Irving L. Fisher, Chester, Pa.	724E	657
No. 360—Letter dated July 14, 1954 from E. H. Bergmann of Sealy, Incorporated to Mr. Irving L. Fisher of Sealy Mattress Co., Chester, Pa.	725E	658
No. 361—Letter dated July 22, 1954 from Irving L. Fisher of Sealy Mattress Company of Philadelphia to Mr. Earl Bergmann of Sealy, Incorporated, Cleveland, Ohio	726E	659
No. 364—Letter dated October 4, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. Louis Haas of Sealy Mattress Company, Ft. Worth, Texas	727E	661
No. 366—Letter dated October 19, 1954 from J. R. Lawrence of Sealy, Incorporated to Mr. R. S. Rogers of Sealy Mattress Company, Brenham, Texas	728E	662
No. 367—Letter dated October 21, 1954 from R. S. Rogers of Sealy Mattress Company to Mr. Roger Lawrence of Sealy, Incorporated, Chicago, Illinois	729E	663
No. 372—Letter dated April 18, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wulliger of Sealy Mattress Company, Cleveland, Ohio	730E	664

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 373—Letter dated April 28, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ernest M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	731E	665
No. 374—Letter dated September 16, 1955 from Ross S. Rosenberg of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy, Inc., Chicago, Ill.	732E	666
No. 375—Letter dated September 19, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. Ross S. Rosenberg of Sealy Mattress Company, St. Paul, Minn.	734E	668
No. 376—Letter dated September 22, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	736E	670
No. 377—Letter dated September 23, 1955 from H. B. Fouts of Sealy Mattress Company to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	737E	671
No. 378—Letter dated October 3, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. H. B. Fouts of Sealy Mattress Company, Des Moines, Iowa	739E	673
No. 379—Letter dated October 12, 1955 from E. H. Bergmann of Sealy, Incorporated to Mr. J. L. Metcalfe of Sealy Mattress Company, Bluefield, Va. and Mr. Wm. A. Edie of Sealy Mattress Company, Louisville, Ky.	740E	674
No. 380—Letter dated October 14, 1955 from William A. Edie of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	741E	675
No. 381—Letter dated October 21, 1955 from William A. Edie of Sealy Mattress Co. to Mr. Earl Bergmann of Sealy, Inc., Chicago, Ill.	742E	676
No. 382—Letter dated October 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. M. Wuliger of Sealy Mattress Company, Cleveland, Ohio	743E	677
No. 383—Letter dated May 11, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Louis J. Gross of Sealy Mattress Company, Rochester, N.Y.	745E	679
No. 384—Letter dated May 23, 1956 from E. Carter Logan of Sealy Mattress Co. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	747E	681

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 385—Letter dated June 4, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. E. C. Logan of Sealy Mattress Company, Louisville, Ky.	749E	683
No. 386—Letter dated June 8, 1956 from Edgar C. Haas Sr. of Sealy Southeast to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Illinois	760E	684
No. 387—Letter of June 12, 1956 from E. H. Bergmann of Sealy Incorporated to Mr. Edgar C. Haas Sr., of Sealy Mattress Company	761E	685
No. 388—Letter dated June 25, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joseph F. Haas, Atlanta, Ga.	762E	686
No. 389—Letter dated August 27, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas to Mr. E. H. Bergmann of Sealy, Incorporated, Chicago, Ill.	763E	687
No. 390—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Company, Lexington, N.C.	765E	689
No. 391—Letter dated August 29, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. R. Rudick of Sealy Mattress Company, Baltimore, Md.	766E	690
No. 392—Letter dated November 23, 1956 from J. V. Moffitt, Jr. of Sealy of the Carolinas, Inc. to Mr. E. H. Bergmann of Sealy, Inc., Chicago, Ill.	767E	691
No. 393—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. J. V. Moffitt, Jr. of Sealy Mattress Co., Lexington, N.C.	770E	694
No. 394—Letter dated November 27, 1956 from E. H. Bergmann of Sealy, Incorporated to Mr. Joe Rudick of Sealy Mattress Co., Baltimore, Md.	772E	695
No. 395—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 12, 1943 from J. R. Haas to Mr. W. J. Craig	774E	697
No. 396—Inter-Factory Correspondence of Sealy Company of the Southeast dated November 8, 1943 from J. R. Haas to Mr. W. J. Craig	775E	698
No. 397—Letter dated July 31, 1944 from Herbert H. Neilson of Sealy Mattress Company to Sealy Mattress Company, Pittsburgh, Pa.	776E	699

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 398—Letter dated August 7, 1944 from W. W. Llewellyn, Jr. of Fort Pitt Bedding Company & Sealy Mattress Company to Mr. Herbert Neilson of Sealy Mattress Company, Cincinnati, Ohio	777E	700
No. 399—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to Mr. John Brody, Sealy Mattress Company, Chicago, Illinois	778E	702
No. 400—Letter dated August 9, 1944 from Herbert H. Neilson of Sealy Mattress Company to the Sealy Mattress Company, Pittsburgh, Pa.	779E	703
No. 401—Letter dated September 23, 1944 from J. M. Brody, Jr. of Sealy, Inc. to Mr. Herbert H. Neilson of Sealy Mattress Co., Cincinnati, Ohio	780E	704
No. 402—Communication dated September 23, 1944 from J. M. Brody, Jr. to Mr. J. R. Haas, "Ohio Boundary Line of Sealy at Cincinnati and Pittsburgh"	781E	706
No. 403—Letter dated September 23, 1944 from Sealy, Inc. to Mr. W. W. Llewellyn, Jr. of Sealy Mattress Co., Pittsburgh, Pa.	782E	707
No. 404—Letter dated September 28, 1944 from W. J. Craig of Sealy, Incorporated to Mr. J. R. Haas	783E	709
No. 409—Letter dated September 16, 1949 from J. R. Lawrence of Sealy, Incorporated to Sealy Mattress Company, Cleveland, Ohio	784E	710
No. 410—Letter dated May 27, 1950 from Ben Rosenfeld of Sealy Mattress Company to Mr. Earl H. Bergmann of Sealy Mattress Company, Cleveland, Ohio	785E	711
No. 411—Letter dated November 16, 1951 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	787E	713
No. 412—Letter dated January 8, 1952 from E. H. Bergmann of Sealy, Incorporated to Sealy Mattress Company, Allston, Mass.	788E	714
No. 413—Letter dated July 24, 1952 from J. J. Willens, Sealy Mattress Co. of Southern California to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	789E	715

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 413-A—Letter dated July 29, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	792E	718
No. 413-B—Letter dated August 26, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Los Angeles, Calif.	793E	719
No. 414—Letter dated December 8, 1952 from E. H. Bergmann, Sealy, Inc. to Sealy Mattress Co., Chicago, Ill.	794E	720
No. 415—Letter dated March 31, 1953 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	795E	721
No. 415-A—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc. to Harry B. Forbes, Sealy Mattress Co., Louisville, Ky.	797E	723
No. 415-B—Telegram dated May 11, 1953 from E. H. Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	798E	723
No. 416—Memorandum dated May 12, 1953 from R. S. Logan to Mr. Bergmann	799E	724
No. 417—Letter from H. L. Forbes, Logan Co., Louisville, Ky. to E. H. Bergmann, Sealy, Inc. dated May 12, 1953	800E	724
No. 417-A—Letter dated May 13, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	802E	726
No. 418—Letter dated May 15, 1953 from M. A. Kaplan, Sealy Mattress Co., Chicago, Ill. to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	804E	728
No. 419—Letter dated May 20, 1953 from Sealy, Inc. to M. A. Kaplan, Sealy Mattress Co., Chicago, Ill.	806E	730
No. 420—Letter dated May 19, 1953 from E. H. Bergmann to H. M. Forbes, Sealy Mattress Co., Louisville, Ky.	808E	732
No. 421—Letter dated May 20, 1953 from E. H. Bergmann to H. L. Forbes, Sealy Mattress Co., Louisville, Ky.	809E	733
No. 422—Memorandum from J. R. Lawrence to E. H. Bergmann dated January 14, 1954	811E	734
No. 423—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to M. A. Kaplan, Sealy Mattress Co., Chicago, Illinois	812E	736
No. 424—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co. to J. R. Lawrence, Sealy, Inc., Chicago, Ill.	813E	737

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 425—Letter dated January 26, 1954 from R. B. Swearingen, Logan Co., to Sealy, Inc., Cleveland, Ohio	814E	738
No. 426—Letter dated January 28, 1954 from C. B. McGillivray, Sealy, to R. B. Swearingen, Sealy Mattress, Louisville, Ky.	815E	739
No. 427—Telegram dated February 5, 1954 from Earl Bergmann, Sealy, Inc., to M. A. Kaplan, Sealy, Chicago, and R. B. Swearingen, Sealy, Louisville, Ky.	816E	740
No. 428—Telegram dated February 8, 1954 from R. B. Swearingen, Logan Co., to E. H. Bergmann, Sealy, Inc.	817E	740
No. 429—Letter dated February 5, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	818E	741
No. 430—Letter dated March 15, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGilliyray, Sealy, Chicago, Ill.	820E	743
No. 431—Letter dated February 16, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago and R. B. Swearingen, Sealy, Louisville, Ky.	821E	744
No. 432—Agreement dated April 2, 1954 between Sealy Mattress of Chicago and Sealy Mattress of Louisville re Pearsons Furniture & Music Co. of Indianapolis	823E	746
No. 433—Letter dated March 22, 1954 from E. H. Bergmann, Sealy, Inc. to C. B. McGillivray, Sealy, Chicago, Ill.	824E	748
No. 434—Letter dated March 25, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	825E	749
No. 435—Letter dated April 2, 1954 from C. B. McGillivray, Sealy, Chicago, Illinois to R. B. Swearingen, Sealy, Louisville, Ky.	827E	751
No. 436—Letter dated April 8, 1954 from R. L. Howard, Logan Co. to Earl Bergmann, Sealy, Inc., Cleveland, Ohio	829E	753
No. 437—Letter dated April 19, 1954 from E. H. Bergmann, Sealy, Inc. to R. L. Howard, Sealy, Louisville, Ky.	832E	756
No. 438—Letter dated February 14, 1955 from Wm. A. Edie, Louisville, Ky. to C. B. McGillivray, Sealy, Chicago, Ill.	833E	757

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 439—Letter dated February 15, 1955 from C. B. McGillivray, Chicago, Ill. to Bill Edie, Sealy, Louisville, Ky.	834E	758
No. 440—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky. and C. B. McGillivray, Sealy, Chicago, Ill.	835E	759
No. 441—Letter dated February 16, 1955 from E. H. Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill. and Wm. A. Edie, Sealy, Louisville, Ky.	836E	760
No. 442—Letter dated February 21, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	837E	761
No. 443—Letter dated February 24, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	838E	762
No. 444—Letter dated February 27, 1955 from W. A. Edie, Sealy, Louisville, Ky. to Earl Bergmann, Cleveland, Ohio with attachments	839E	763
No. 445—Telegram dated March 2, 1955 from Earl Bergmann, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	843E	769
No. 446—Letter dated March 2, 1955 from C. B. McGillivray, Sealy, Chicago, Ill. to Earl Bergmann, Sealy, Chicago, Ill.	844E	769
No. 447—Letter dated April 11, 1955 from C. B. McGillivray, Sealy, to Wm. A. Edie, Sealy, Louisville, Ky.	846E	771
No. 447-A—Agreement dated January 1, 1955 between Sealy of Chicago and Sealy of Louisville, Ky.	847E	772
No. 448—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	848E	773
No. 449—Letter dated April 29, 1955 from Wm. A. Edie, Sealy, to C. B. McGillivray, Sealy, Chicago, Ill.	849E	774
No. 450—Letter dated June 8, 1955 from Wm. A. Edie, Sealy, to Earl Bergmann, Sealy, Chicago, Ill.	850E	775
No. 451—Letter dated August 3, 1955 from E. H. Bergmann, Sealy to E. C. Logan, Sealy, Louisville, Ky.	851E	776

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 452—Letter dated January 11, 1956 from Robert L. Howard, Controller to Ray Garland, Pearsons, Chicago, Ill.	854E	778
No. 453—Letter dated October 17, 1956 from Fielden Woodward, Woodward, Hobson & Fulton, Louisville, Ky. to E. H. Bergmann, Sealy, Inc.	855E	779
No. 454—Letter dated October 29, 1956 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Sealy, Chicago, Ill.	858E	782
No. 455—Letter dated November 8, 1956 from E. C. Logan, Sealy, Louisville to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	859E	783
No. 456—Letter dated March 12, 1953 from J. R. Lawrence, Sealy, Inc. to H. L. Forbes, Sealy, Louisville, Ky.	861E	785
No. 457—Memorandum from J. R. Lawrence to E. H. Bergmann, dated April 14, 1953	862E	786
No. 458—Letter dated October 14, 1953 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	863E	787
No. 459—Letter from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland, Ohio, dated December 24, 1953	865E	789
No. 460—Letter from R. G. Culp, Sealy, Pittsburgh, to E. H. Bergmann, Sealy, Inc., Cleveland, Ohio	866E	790
No. 461—Letter dated January 12, 1954 from E. H. Bergmann, Sealy, Inc. to Sealy of Pittsburgh	867E	792
No. 461-A—Letter dated May 18, 1954 from E. H. Bergmann, Sealy, Inc. to Max Lewis, Sealy, Paterson, N.J.	869E	793
No. 461-B—Letter from M. Lewis, Sealy, Paterson, N.J. to E. H. Bergmann, Sealy, Inc., dated May 20, 1954	870E	794
No. 462—Letter dated July 19, 1954 from Morris A. Kaplan, Sealy, Chicago to Marcus Haas, Sealy, Memphis, Tenn.	872E	795
No. 463—Letter dated July 21, 1954 from M. L. Haas, Sealy Company of the Southeast to Sealy, Chicago, Ill.	873E	796
No. 464—Letter dated July 26, 1954 from Morris A. Kaplan, Sealy, Chicago, Ill. to H. N. Ryden, Sealy, Des Moines, Iowa	875E	798

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 465—Letter dated August 3, 1954 from H. N. Ryden, Sealy, Des Moines to Morris A. Kaplan, Sealy, Chicago, Ill.	877E	891
No. 466—Letter dated August 10, 1954 from E. H. Bergmann, Sealy, Inc. to M. A. Kaplan, Chicago; Harry Ryden, Des Moines; Marcus Haas, Memphis; and P. D. Brown, Detroit	878E	892
No. 467—Letter dated August 12, 1954 from H. N. Ryden, Sealy, Des Moines to Earl H. Bergmann, Sealy, Inc.	880E	894
No. 468—Letter dated August 13, 1954 from C. B. McGillivray, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	881E	895
No. 469—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Harry Ryden, Sealy, Des Moines	882E	896
No. 470—Letter dated August 19, 1954 from M. L. Haas, Sealy, Memphis to Sealy, Inc., Cleveland	883E	897
No. 471—Letter dated August 17, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville	884E	898
No. 472—Letter dated September 7, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph Swearingen, Sealy, Louisville, Ky.	885E	899
No. 473—Letter dated September 9, 1954 from "Leon", Sealy, Louisville to Ralph Swearingen	886E	810
No. 474—Letter dated September 13, 1954 from R. B. Swearingen, Sealy, Louisville to E. H. Bergmann, Sealy, Inc.	887E	812
No. 475—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to Ralph B. Swearingen, Sealy, Louisville	888E	814
No. 476—Letter dated August 24, 1954 from J. R. Rudick, Sealy, Baltimore to Earl Bergmann, Sealy, Inc. with attached letter dated August 24, 1954 from J. R. Rudick to Eugene Kligman, Sealy, Brooklyn	889E	815
No. 477—Letter dated August 26, 1954 from E. H. Bergmann, Sealy, Inc. to Joseph Rudick, Sealy, Baltimore, Md.	892E	818
No. 478—Letter dated September 15, 1954 from M. L. Haas, Sealy, Memphis to Louis G. Haas, Sealy of the Southwest	893E	819
No. 479—Letter dated September 27, 1954 from E. H. Bergmann, Sealy, Inc. to C. McGillivray, Sealy, Chicago, Ill.	894E	820

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

Government's Exhibits—Continued	Original	Print
No. 480—Letter dated December 28, 1954 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	896E	822
No. 481—Letter dated December 30, 1954 from Ernest M. Wuliger, Sealy, Cleveland, to H. F. Kaufman, Sealy, Pittsburgh	897E	823
No. 483—Letter dated January 7, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	898E	824
No. 484—Letter dated January 7, 1954 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	899E	825
No. 485—Letter dated January 10, 1955 from (?) to Ernest	900E	826
No. 486—Letter dated January 13, 1955 from Ernest M. Wuliger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc.	901E	828
No. 487—Letter dated January 14, 1955 from E. H. Bergmann, Sealy, Inc. to Ernest M. Wuliger, Sealy, Cleveland, Ohio	902E	829
No. 488—Letter dated January 17, 1955 from Ernest M. Wuliger, Ohio Mattress Co., Cleveland to E. H. Bergmann, Sealy, Inc., Cleveland	904E	831
No. 489—Letter dated February 17, 1955 from H. F. Kaufman, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	905E	833
No. 490—Letter dated March 11, 1955 from E. H. Bergmann, Sealy, Inc. to E. M. Wuliger, Sealy, Cleveland	907E	835
No. 491—Memorandum dated March 17, 1955 from Kay K. Kaplan to Mr. Bergmann	908E	836
No. 492—Letter dated March 17, 1955 from E. H. Bergmann, Sealy, Inc. to H. F. Kaufman, Sealy, Pittsburgh	910E	837
No. 493—Letter dated February 10, 1955 from C. B. McGillivray to Bill Edie, Logan Company, Louisville, Ky.	911E	838
No. 494—Letter dated June 20, 1955 from Roy B. Unger, Sealy, Cleveland to E. H. Bergmann, Sealy, Inc., Chicago	912E	839
No. 495—Letter dated July 6, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland	913E	840
No. 496—Letter dated August 9, 1955 from E. H. Bergmann, Sealy, Inc. to Roy Unger, Sealy, Cleveland, and J. DiSalvo, Sealy, Pittsburgh	914E	841

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 497—Letter dated July 25, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann Sealy, Inc., Chicago	915E	842
No. 498—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	916E	843
No. 499—Letter dated August 3, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	917E	844
No. 500—Letter dated August 8, 1955 from Morris A. Kaplan, Sealy, Chicago to E. H. Bergmann, Sealy, Inc.	918E	845
No. 501—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	919E	846
No. 502—Letter dated August 11, 1955 from E. H. Bergmann, Sealy, Inc. to Morris A. Kaplan, Sealy, Chicago	920E	847
No. 503—Letter dated September 20, 1955 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	921E	848
No. 504—Letter dated September 22, 1955 from D. B. Embree, Sealy, Memphis, to E. H. Bergmann, Sealy, Inc., Chicago	922E	849
No. 505—Letter dated October 15, 1955 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc. with attached catalog sheet of Harrison Wholesale Company	923E	850
No. 506—Letter dated October 18, 1955 from E. H. Bergmann, Sealy, Inc. to D. B. Embree, Sealy, Memphis	925E	853
No. 507—Letter dated August 18, 1955 from A. Eisenberg, Sealy, New York to Max Lewis, Sealy, Paterson, N.J.	926E	854
No. 508—Letter dated August 24, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Brooklyn	927E	855
No. 509—Letter dated August 29, 1955 from Eugene Kligman, Sealy, New York to Earl Bergmann, Sealy, Inc.	928E	856
No. 510—Letter dated September 19, 1955 from E. H. Bergmann, Sealy, Inc. to Eugene Kligman, Sealy, Brooklyn	929E	857

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 511—Letter dated November 2, 1955 from Eugene Kligman, Sealy, Brooklyn to Earl Bergmann, Sealy, Inc. Chicago	930E	858
No. 512—Letter dated October 26, 1955 from Fred Weintraub, Darling Distributing Corp., N.Y. to Gene Kligman, Sealy, Brooklyn	932E	860
No. 513—Letter dated September 7, 1955 from J. R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	933E	861
No. 514—Letter dated May 21, 1956 from J. R. Rudick, Sealy, Baltimore to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	935E	863
No. 515—Letter dated April 18, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	936E	864
No. 516—Letter dated April 13, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	938E	866
No. 517—Letter dated September 26, 1955 from Sidney Sutherland, Sealy, Richmond, Va. to Joe Moffitt, Sealy, Lexington, N.C.	941E	869
No. 518—Letter dated October 14, 1955 from J. V. Moffitt, Jr., Sealy, Lexington, N.C. to Sidney Sutherland, Sealy, Richmond, Va.	942E	870
No. 519—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	944E	872
No. 520—Letter dated October 18, 1955 from Sidney Sutherland, Sealy, Richmond to J. V. Moffitt, Jr., Sealy, Lexington, N.C.	945E	873
No. 521—Letter dated July 5, 1956 from Joseph R. Rudick, Sealy, Baltimore to E. H. Bergmann, Sealy, Inc.	946E	874
No. 522—Letter dated February 29, 1956 from D. B. Embree, Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	948E	876
No. 523—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to Mrs. D. B. Embree, Sealy, Memphis	949E	877
No. 524—Letter dated March 2, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	950E	878
No. 525—Letter dated March 12, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	951E	879

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 526—Letter dated May 7, 1956 from Wm. A. Edie, Sealy, Louisville to Earl Bergmann, Sealy, Inc., Chicago, Ill.	952E	880
No. 527—Letter dated May 8, 1956 from E. H. Bergmann, Sealy, Inc. to William Edie, Sealy, Louisville	953E	881
No. 528—Letter dated December 4, 1956 from Edgar C. Haas, Jr., Sealy, Memphis to E. H. Bergmann, Sealy, Inc., Chicago, Ill.	954E	882
No. 529—Letter dated December 17, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar C. Haas, Jr., Sealy, Memphis	955E	883
No. 530—Letter dated December 18, 1956 from E. H. Bergmann, Sealy, Inc. to J. L. Metcalfe, Sealy, Bluefield, Va.	956E	884
No. 531—Letter dated December 26, 1956 from J. L. Metcalfe, Sealy, Bluefield, Va. to E. H. Bergmann, Sealy, Inc.	957E	885
No. 532—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to Edgar Haas, Jr., Sealy, Memphis, Tenn	958E	886
No. 533—Letter dated December 28, 1956 from E. H. Bergmann, Sealy, Inc. to R. G. Culp, Sealy, Pittsburgh	959E	887
No. 534—Letter dated December 31, 1956 from R. G. Culp, Sealy, Pittsburgh to E. H. Bergmann, Sealy, Inc.	960E	888
No. 601—Minutes of the Sealy Board of Directors Meeting, held at Pittsburgh, Pa., November 4, 1938 (excerpts)	961E	889
No. 638—Minutes of Reconvened Meeting of Sealy, Inc. Board of Directors, held at San Souci Hotel, Miami Beach, Florida, April 7, 1954 (excerpts)	968E	890
No. 662—Minutes of the Advertising & Merchandising Committee Meeting in Chicago, Ill., December 11, 1956 (excerpts)	972E	891
No. 664—Minutes of the Advertising & Merchandising Committee Meeting in New York, January 26, 1957 (excerpts)	978E	896
No. 741—Bulletin from J. R. Lawrence to all Sealy Licensees. Subject: Resume of royalty payments. Dated May 29, 1952 (excerpts)	984E	900

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 753—Bulletin from E. H. Bergmann to all Sealy Licensees. Subject: Programs of procedure approved and adopted by the Board of Directors. Dated May 28, 1954	986E	901
No. 777—Bulletin from E. H. Bergmann to all Sealy plants. Subject: Specification and cost committees for 1956. Dated February 17, 1956	989E	904
No. 816—Letter from Ernest M. Wuliger to E. H. Bergmann. Dated February 11, 1953	990E	905
No. 817—Letter from H. F. Kaufman to E. H. Bergmann. Dated February 18, 1953	991E	906
No. 887—Letter from J. V. Moffitt, Jr. to E. H. Bergmann. Dated May 4, 1956	992E	908
No. 878—Letter from E. H. Bergmann to J. V. Moffitt, Jr., dated May 8, 1956	993E	909
No. 932—Minutes of Executive Committee Meeting, held William Penn Hotel, Pittsburgh, Pa., December 14, 1936 (excerpts)	994E	910
No. 933—Minutes of Executive Committee Meeting, held Stevens Hotel, Chicago, Ill., January 7, 1937 (excerpts)	999E	913
No. 934—Minutes of Board of Directors Meeting, held Stevens Hotel, Chicago, Ill., January 8, 1937 (excerpts)	1002E	916
No. 937—Minutes of the Board of Directors Meeting, held Palmer House, Chicago, Ill., June 30 and July 1, 1937 (excerpts)	1004E	916
No. 938—Minutes of the Stockholders Meeting of Sealy, Inc., held Palmer House, Chicago, Ill., July 2 and 3, 1937 (excerpts)	1006E	917
No. 939—Alphabetical list of Stockholders, December 6, 1937 and Sealy Annual Meeting, held Palmer House, Chicago, Ill. Board of Directors, December 7, 1937 (excerpts)	1008E	918
No. 940—Sealy Stockholders Meeting, held Palmer House, Chicago, Ill., December 7, 1937 (excerpts)	1012E	920
No. 941—Minutes of Executive Committee Meeting, held Hotel George Washington, W. Palm Beach, Fla., February 21 and 22, 1938 (excerpts)	1022E	923
No. 946—Minutes of the Semi-Annual Meeting of Members and Stockholders of Sealy, Incorporater, held Pursuant to Notices Duly Mailed, at the Congress Hotel, Chicago, Illinois, July 3, 1941 (excerpts)	1028E	924

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 950—Proceedings of Licensee Meeting Sealy, Inc., held Palmer House, Chicago, Illinois, November 28, 1942 (excerpts)	1029E	925
No. 951—Minutes of the Meeting of the Licensees of Sealy Incorporated, held at the Chicagoan Hotel, December 4, 1943	1031E	926
No. 956—Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 23, 1945 (excerpts)	1033E	928
No. 957—Minutes of the Meeting of the Licensees of Sealy, Incorporated, held Drake Hotel, Chicago, Ill., November 25, 1945 (excerpts)	1035E	928
No. 958—List of Stockholders, Sealy, Incorporated, March 9, 1947	1037E	929
No. 962—Minutes of the Meeting of the Stockholders of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 21, 1947 (excerpts)	1038E	930
No. 964—Minutes of Meeting of Licensees of Sealy, Incorporated, held at Furniture Mart, July 2, 1948 (excerpts)	1040E	931
No. 970—Minutes of the Board of Directors of Sealy, Incorporated, held Stevens Hotel, Chicago, Ill., November 11, 1950 (excerpts)	1044E	932
No. 972—Minutes of Sealy Incorporated Board of Directors Meeting, held at the American Furniture Mart, Chicago, Illinois, November 9, 1951 (excerpts)	1046E	933
No. 973—Minutes of Sealy, Incorporated Stockholders Meeting, held at American Furniture Mart, Chicago, Ill., November 10, 1951	1050E	936
No. 974—Minutes of Sealy, Incorporated New Board of Directors Meeting, held at the American Furniture Mart, Chicago, November 10, 1951 (excerpts)	1051E	938
No. 976—Minutes of Sealy, Incorporated Board of Directors Meeting, held at Conrad Hilton Hotel, Chicago, Ill., November 21, 1952 (excerpts)	1054E	939
No. 978—Sealy, Incorporated Stockholders List	1062E	943
No. 980—List of Sealy, Incorporated Stockholders, September 23, 1955	1063E	945
No. 981—By-Laws of Sealy, Incorporated, November 11, 1955	1064E	946

	Original	Print
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Government's Exhibits—Continued		
No. 985—List of Sealy, Incorporated Stockholders, September 26, 1956	1074E	957
No. 991-D—Sealy, Inc.—Officers and Directors, 1956-1957	1075E	958
No. 991-E—Sealy, Incorporated 1957 Committees	1076E	960
No. 991-F—Names, addresses and position of Sealy, Incorporated Employees, 1951 To-Date	1077E	962
No. 991-G—Names, Companies and Locations of Sealy Plants, dated October 26, 1956	1079E	965
Volume IV—Exhibits		
No. 991-H—Names and Locations of Sealy, Incorporated Stockholders, by Plants	1081E	967
No. 996—Selected pages of Sealy, Incorporated Report on Examination, Year ended June 30, 1956 (excerpts)	1084E	970
No. 998—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1955 (excerpts)	1090E	974
No. 999—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1954 (excerpts)	1092E	976
No. 999-A—Selected pages of Sealy, Incorporated, Report on Examination, Year ended June 30, 1953 (excerpts)	1094E	978
No. 1005—Selected pages of Agenda, Sealy, Board of Directors Meeting, April 5-6-7, 1954 (excerpts)	1097E	980
—1954 Committees, Sealy, Incorporated	1098E	980
No. 1011—Annual Stockholders Meeting, Sealy, Incorporated, November 12, 1954	1099E	983
No. 1012—Manufacturer's Contract, dated September 1, 1936 at Pittsburgh, Pa. by Sealy, Incorporated and The Ohio Mattress Co. of Cleveland, Ohio	1110E	997
No. 1013—Contract Agreement between Sealy and the Ohio Mattress Co., dated December 1, 1937 at Pittsburgh, Pa.	1126E	1011
No. 1014—Contract made between Sealy, Incorporated and Made-Wel Bedding Co. Proprietors—Morris Lewis & Samuel Hertz of 43 Aspen St., Passaic, N. J., at Chicago, Ill., May 1, 1941	1129E	1013

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 1015—Contract made between Sealy, Incorporated and the Fred G. Hodges Bedding Co. of Reading, Pa. at Pittsburgh, Pa. on August 1, 1938	1145E	1027
No. 1016—Contract made between Sealy, Incorporated and U.S. Bedding Co. of Shelby County, Memphis, Tenn., November 1, 1936, at Pittsburgh, Pa.	1164E	1046
No. 1017—Contract made between Sealy, Incorporated and The Colorado Mattress Mfg. Co., of Denver, Colo., at Pittsburgh, Pa. on September 12, 1936	1201E	1092
No. 1018—Contract made between Sealy, Inc. and Sealy Mattress Co. of Northern California, place of business, Oakland, California, at Pittsburgh, Pa. on December 15, 1937	1222E	1113
No. 1020—Telegram from J. R. Lawrence to I. A. Wiener, dated December 2, 1948	1256E	1153
—Letter from I. A. Wiener to J. R. Lawrence, dated November 29, 1948	1257E	1153
—Letter from J. R. Lawrence to I. A. Wiener, dated November 24, 1948	1258E	1154
—Telegram from L. Ballard to J. R. Lawrence, dated December 8, 1948	1259E	1155
—Telegram from Sealy Mattress, Allston, Mass. to J. R. Lawrence, dated December 8, 1948	1260E	1155
—Letter from J. R. Lawrence to I. A. Wiener, dated December 15, 1948	1261E	1156
—An Agreement made between Eagle Mattress Co., and Sealy, Inc., on May 1, 1946	1262E	1157
No. 1031—Amendment to the Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, dated October 1947	1270E	1171
No. 1051—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Sartilee (Mrs. Bernard) Kegan, on September 27, 1948	1273E	1174
No. 1061—Contract between Sealy, Incorporated and U.S. Bedding Co., of Memphis, Tenn., a corporation of Georgia, on July 1, 1950	1284E	1192

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

	Original	Print
Government's Exhibits—Continued		
No. 1064—Contract between Sealy, Incorporated and David Mfg. Co., of the State of Missouri, with office at Kansas City, Mo., on October 1, 1952	1295E	1211
No. 1065—Contract between Sealy, Incorporated and Peerless Mattress Co., Inc., a corporation of North Carolina, with offices in Lexington, N.C., on November 1, 1952	1314E	1232
No. 1074—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan and Rebecca R. Lichter, on May 15, 1952	1334E	1254
No. 1085—Contract between Sealy, Incorporated and Schmitt & Henry Mfg. Co., of Des Moines, Iowa, whose tradename is Sealy Mattress Co., on September 28, 1948	1353E	1275
No. 1086—Contract between Sealy, Incorporated and Brown Reliable Bedding Co., a corporation of Michigan, on September 1, 1954	1365E	1296
No. 1107—Interrogatories 7, 8 and 9 and answers thereto	1383E	1315
No. 1113—Interrogatories 58 and 62 and answers thereto	1391E	1322
No. 1168—Telegram sent to Marty Rudick from Gloria S. Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 2, 1956	1402E	1332
No. 1169—Letter from Marty Rudick to Mr. Norman Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 27, 1956	1403E	1333
No. 1170—Letter from Norman Bennett to Marty Rudick, Sealy Mattress Co., Baltimore, Md., dated April 21, 1956	1404E	1334
No. 1171—Letter from Marty Rudick to Norman Bennett, dated August 29, 1956	1405E	1335
No. 1172—Letter from Norman Bennett, President to Marty Rudick, dated September 10, 1956	1406E	1336

[fol. 631E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT NO. 285

Dict. 5/4/51.
May 7, 1951.

Fisher Products Company
316 Price Street
Chester, Pennsylvania

Attention: Mr. Irving L. Fisher

Dear Irving:

I want to acknowledge receipt of your letter of April 21 and also to confirm my telephone conversation to you regarding that letter at this time.

As I stated to you I am not in a position to guarantee to you that I can amend the contract at this time to include Montgomery and Buck counties. However, as I mentioned to you I did dispatch a letter to the Reading plant a day or two ago wherein I called their attention to the fact that inasmuch as they have not objected to my letter to them stating that it was my desire to include these two counties in your contract that I assumed they were willing to cooperate and that I was issuing their new contract on that basis. I have every reason to believe that Ted Englehardt is going to be perfectly willing to go along on that basis, but I do not want to definitely promise you the contract until I have his verbal or written okay.

So far as the second suggestion in your letter regarding revisions or amendments to the contract this letter may be accepted as a statement of principle on the part of Sealy Incorporated to the extent that should, in the future, government restrictions develop which would leave your company without any quota of mattress units in order to operate your mattress business that Sealy Incorporated would not expect to have fulfilled the provisions of the contracts regarding the minimums and the only thing that would be required would be the payment of the royalty on the actual sales consummated. Frankly, I do not believe there is too great a danger in this direction, but we are perfectly willing to confirm our understanding that we would not expect

our minimums in the case that you found yourself in a position to operate.

[fol. 632E] As to the setting back of the effective date of the paying of the royalty payments on actual sales I do not believe that this is too important at this time. We do not know as to how extensive it is going to be and it is my suggestion that we proceed on the basis of the outline by Mr. Lawrence and then if we see that the amount of revenue that would be due Sealy could be used in the way of an additional source of advertising income to you I am quite sure that we can work out something at that time that will be to your benefit and to the interest of Sealy.

I am tentatively setting my itinerary to be in Philadelphia on Monday the twenty-eighth. Mrs. Bergmann and I will probably drive from Cleveland on the twenty-sixth and spend Sunday the Twenty-seventh at Hershey and be over in Chester early on the morning of the twenty-eighth. I would probably want to proceed to Reading on the twenty-ninth and then return home to Cleveland on Decoration Day, May 30.

If you do not hear further from me please anticipate our being in Chester on the twenty-eighth and I would appreciate it if you would obtain reservations for Mrs. Bergmann and me for a twin bedded room, if possible, in a suitable hotel in Philadelphia for the night of the twenty-eighth.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 633E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 289

FISHER PRODUCTS COMPANY

Leading Specialists in Dual Purpose Furniture
316 Price Street—Chester, Pennsylvania
Telephone Chester 5-1865

July 10, 1951.

Sealy, Inc.
633 3rd St., N. W.
Massillon, Ohio

Attention: Mr. Earl Bergmann

Dear Earl:

This letter is merely for the purpose of putting on record our desire for an option for the territory now served by Sealy Mattress Company of Reading in the event that any change should occur at that point.

In working with our advertising counsel in planning our complete advertising program for this area for Sealy, we find that due to the peculiar local situation of limited advertising media, that a very large portion of our advertising is being directed into this territory now serviced by the Reading plant. I know that this will ultimately lead to some embarrassment for the Reading plant, particularly on promotional activities which we will originate in this area.

Another reason for our desiring an option on this territory, in the event of a change, is that we find ourselves with a very limited number of smaller towns in which to operate. On examining and talking with the more successful Sealy members in almost every case they have a fairly good small town distribution in addition to their larger cities. This helps definitely, in my opinion, to balance your distribution from a safety distribution factor.

You will be interested to know that we are planning to get together with Ted Englehart to attempt to resolve some

of the differences which may arrise in order to try to get along harmoniously to the very best of our abilities. Also, I don't want you to misconstrue the intent of this letter. My only object in writing you is to put on paper some of the thoughts that we have had and discussed in the past, and is not in any way intended to act or seem as a slur against the present Reading operation.

If you have any comments on this entire matter, I would appreciate hearing from you.

Very truly yours, Fisher Products Company, Irving L. Fisher.

ILF:edp

[fol. 634E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 290

Dict. 7/17/51.
July 18, 1951.

Fisher Products Company
316 Price Street
Chester, Pennsylvania

Attention: Mr. Irving Fisher

Dear Irv:

I acknowledge receipt of your letter of July 10 in regard to your placing on record your desires for an option on the territory now embraced by the Reading plant in the event that any changes should occur at that point.

The writer understand perfectly the situation and as he has previously advised you verbally if there is a change at any time in the status of the licenseeship for that territory you will be given the first opportunity to obtain it.

It pleases me very much to learn that you and Mr. Engelhardt are getting together to attempt to solve some of the differences which may arise between your promotional activity and his plant. This is the correct spirit of cooperation. I know both of you are reasonable and sensible men and I have no doubt but what you will reach an agreement as to the procedure.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB/ba

[fol. 635E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 291

SEALY COMPANY OF THE SOUTHEAST

Sleeping on a Sealy is like Sle ping on a Cloud

1047 Florida Street—Memphis 2, Tennessee
Telephone 35-11631

April 10, 1952.

Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Roger:

This is in reference to your letter of April 1 to Mr. Louis concerning changes in our Kentucky territory during the past several months.

Roger, quite frankly you have us puzzled here, because so far as we know there has been no change for a year or more now, and to the best of our knowledge we have not given up Todd and McLean counties, nor any of the other counties in the immediate proximity. So that you may know just what our records here show on our territory, I am outlining below the Easternmost counties in Kentucky which we serve, beginning at the Ohio river and moving Southward:

Henderson
McLean
Muhlenberg
Todd

As you will note on a map, all of the above are more or less in a straight line Southward from the Ohio and we service them all. Anything East of these four belongs to Louisville. There was some discussion between Mr. Berg-

mann and Mr. Louis a few months ago about our relinquishing a few counties to Louisville, but at that time Mr. Louis told him a definite "No," and so far as I know no changes have been effected.

Hope this gives you the information you require, but if we can be of any further help please advise me.

Sincerely, Sealy Company of the S. E., Linda Ballard.

LB/s

[fol. 636E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 295

July 15, 1952.

Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Attention: Mr. Sidney Sutherland

Dear Sidney:

We will adjust your television account in line with your letter of July 11th. We are right now in the process of closing our books for our fiscal year, but will attend to this matter prior to the first of August.

I think Mr. Bergmann will probably issue a bulletin on the dates of the meeting to be held in New York City in September. I am not certain as to the exact dates or to the location where the meeting will be held.

I wish you would check over your North Carolina territory and let me know what counties you are active in. There is a possibility that we will make a change in our representation in North Carolina and will have a plant at Lexington, North Carolina. Some of the counties around Greenville, North Carolina and south of that town would be better served from that point, and I will appreciate it if you will check this matter over and let me know what counties in that state are not of particular interest to you. It seems to me that the counties that fall within your natural service area would only include Warren, Halifax, Northampton, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck.

I will appreciate it if you will go over the above matter and let me know of what accounts you have in the counties outside of those listed above.

[fol. 637E] Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:ht

[fol. 638E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 296

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 52845
8 South Harvie Street

July 17, 1952.

Earl—Return to me and we can discuss later. I am surprised we haven't heard from Peerless as Moffitt told Harry Forbes he was going ahead with the proposition

Roger.

Mr. J. R. Lawrence
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I received your communication of July 15th which is in reply to my recent letter concerning the Television Account. Whenever you can adjust this I would appreciate your doing so.

I will be very much interested in receiving the actual dates of the New York Meetings if and when Earl issues a bulletin. However, he may not issue a general bulletin to the Licensees. If he does not issue a general bulletin to the licensses I would appreciate your advising me whenever you find out the exact time and location.

I note your remarks concerning the probability of change in plant ownership in North Carolina. I would like very much to see an arrangement worked out with the party in question as I think they are good live wide awake concern and will be beneficial to Sealy.

I have gone over the North Carolina territory which is served by me in my new contract and I find that in most of

the counties which you name that you think namely should be served from Richmond such as Warren, Halifax, Northampton, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden and Currituck. Wish to state that in all of these counties there are only three towns of any importance; Elizabeth City, Roanoke Rapids and Henderson. In the other eleven counties in North Carolina which are in my regular territory according to the new contract are my best towns, such as Rocky Mount in Nash County; Tarboro in Edgecombe County; Greenville in Pitt County; Plymouth in Washington County; Washington in Beaufort County and Williamston in Martin County.

[fol. 639E] We are selling accounts in all of these towns and it is our intentions to intensify our efforts in this area maybe by putting on a regular route delivery truck.

We are also in the midst of trying to make arrangements in Richmond to develope our plant to a one story affair and if I get the proposed plant I will need all of my present territory to keep me busy.

You know that my thoughts are sincere in helping Sealy but I do not feel that I can relinquish any of my present territory especially if I get the new proposed plant.

If you will refer to Sealy's list of the potential sales schedule of the United States you will find that Richmond is the second to the lowest on the list having 1.3659 percentage. In view of these circumstances I do not see how I can relinquish any additional territory in Carolina.

The only possible change which I feel I can be justified in making would be to turn over two or three of the counties in the extreme southern part of Carolina such as Pamlico and perhaps Beaufort and Pitt but in order to relinquish this territory I feel that I should make a deal with Sealy and Joe Rudick in the northern part of Virginia and that the counties of Prince William and Fauquier should be included in the Richmond territory. In reference to the two Richmond area counties in the Eastern Shore known as Northampton and Accomac I am still willing to concede these to the Baltimore territory.

If I relinquish the two Eastern Shore Counties in Virginia to Baltimore and receive the two counties in Northern

Virginia from Baltimore and relinquish the three counties named in extreme south eastern North Carolina to Lexington my percentage of potential sales in the United States would be cut considerably. I would then be somewhere in the neighborhood of 1.2500 which would throw Richmond into the smallest potential purchasing power of the whole outfit. However to enhance the prospects of Sealy I am willing to consider the above.

With kindest regards and best wishes, we remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

[fol. 640E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 297

PEERLESS MATTRESS COMPANY INCORPORATED

Lexington, North Carolina
"Peerless" Quality Bedding
Phone 572

August 4, 1952.

Sealy Inc.
666 North Lakeshore Drive
Chicago, Illinois

Attention Mr. J. R. Lawrence

Dear Mr. Lawrence:

We are sorry that we have been delayed in giving you an answer on the Sealy franchise for North and South Carolina.

We are prepared to take the franchise and to sign your three year contract, effective October 1, 1952, provided the following reservations on our part are acceptable to you and to your board of directors.

(1) We are not agreeable to the payment of any royalty at any time on our own private merchandise. Instead we will guarantee you royalty on minimum Sealy sales of $200,000.00 during the second year of the contract and on minimum Sealy sales of $300,000.00 during the third year of the contract.

(2) We would have to be assured of a more reasonable allocation of territory in Eastern North Carolina. Specifically, we would want the following as a minimum, from the territory now allocated to Richmond:

.0328 Pitt County—in which our warehouse is located
.0186 Beaufort County
.0018 Hyde County
.0048 Washington County

.0017 Tyrrell County
.0126 Martin County
.0272 Edgecomb County
.0298 Nash County
.0165 Vance County—in which one of our salesmen lives
.0080 Warren County
.0010 Dare County
.1558 [Check Richmond letter]

(3) We would have to know what you mean by the "annual royalty" mentioned in Section V, paragraph 1 (f) of the sample contract in our possession.

[fol. 641E] We enclose a map of North Carolina and South Carolina, on which we have marked off the territories allocated at present to Bluefield and Richmond. We presently maintain full time warehouses in Charlotte, High Point, Greenville, North Carolina, and in Columbia, South Carolina. We think that we are in position to establish a warehouse arrangement quickly in Asheville, North Carolina. The Charlotte warehouse manager sells our bedding products and Armstrong floor covering in Charlotte, only. The High Point warehouse manager sells our bedding products and Armstrong floor covering in High Point only. We employ three additional full time salesmen for the sale of our bedding products only.

Under the arrangement as we contemplate it, we would add one additional bedding salesman in North Carolina, reducing the territory of the three salesmen above mentioned, setting up a new territory bounded on the east by Highway 220 and on the west by Highway 21, including the towns thereon. The salesman whom we hire for this territory will be authorized to sell Sealy merchandise and Peerless bedding items only and will have his greatest opportunity in the principal cities, Charlotte, Concord, Winston-Salem, High Point and Greensboro.

The point is that we have entirely dropped the idea of employing separate salesmen on the Sealy product.

Nevertheless we expect to continue doing a substanial business on our own product in medium price ranges. We

are currently doing between $600/700,000.00 a year on our mattresses and box springs. The high percentage of these sales are on private merchandise against which Sealy issues specifications. It is obvious, therefore, under the contract as it is now written, the Sealy franchise might cost us, not 3%, but nearer 6% of the total value of Sealy products manufactured. This we cannot agree to.

Likewise, in South Carolina, the salesman will have the privilege of selling both Peerless and Sealy bedding items. We contemplate the addition of another salesman to the South Carolina territory at the earliest practicable moment. There is a possibility that Mr. Graham Armstrong may take over the South Carolina sales job.

[fol. 642E] We have three garnetts, two filling machines, three tape edge machines, one box spring press, one button tufting machine, one cotton tufting machine, three roll edge machines, one quilting machine, six Singer 300 W101 sewing machines.

In Lexington we have 33,964 square feet of space, including 9,299 square feet for manufacturing, 1,380 square feet for packing, 4,860 square feet for finished goods storage and 18,425 square feet for raw material and jobbing items (metal beds, metal springs, rollaway beds etc) storage.

We would not be able to manufacture the Sealy line of upholstered furniture in our present plant. Our employees are not qualified to manufacture upholstered furniture. We plan to rent a separate building in Lexington, setting up a separate organization for this job. We would necessarily have to go slowly into the manufacturing of upholstered furniture.

In Charlotte we have approximately 10,000 square feet of floor space of which approximately 2,000 square feet is available for finished mattress and box spring storage.

The same applies to High Point.

In Greenville, North Carolina, we have 4,800 square feet of floor space, all available for storage of bedding items and associated bedding jobbing lines.

In Columbia we have 4,000 square feet of space, all available as above, for bedding items. We presently employ 35

in the Lexington plant. We are not unionized. We pay practically all jobs on a piece rate basis.

We attach the copy of our statement as of December 31, 1951. As explained to you, we are presently doing slightly in excess of $2,000,000 per year of which the Armstrong Cork Company's line of floor coverings, destributed from High Point and Charlotte only, accounts for slightly over $1,000,000.

The names of our officers are as follows:

Mrs. J. V. Moffitt, Sr.—President
Earle E. Riddle—Vice-President
J. V. Moffitt, Jr.—Secretary-Treasurer

[fol. 643E] The names of our stockholders and their holdings are as follows:

Mrs. J. V. Moffitt, Sr.	— 877 shares
J. V. Moffitt, Jr.	— 803 shares
Mrs. J. C. Leonard, Jr. (sister)	— 382 shares
Mrs. F. P. Goodson, Jr. (sister)	— 376 shares
Earle E. Riddle	— 62 shares
	2500 shares

We trust that we have given you all of the information that you need. We will be glad to hear from you.

Yours very truly, Peerless Mattress Company, J. V. Moffitt, Jr.

jvm jr/jl

[fol. 644E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 298

To: Mr. J. R. Lawrence August 8, 1952.
Dict. 8/7/52.

Dear Roger:

I, of course, do not know too much about the territory that Peerless is trying to get in North Carolina. As I stated before, I am not in the mood to attempt to milk any more away from Sidney and unless this is something that is of no importance whatsoever to Sidney in the way of territory, I am afraid that we are not going to be able to do too much about it.

As to the condition of not paying royalty on his regular items and his guarantee for a specific volume, I would be inclined to give a good bit of thought. I think what you should do is to prepare, Monday or Tuesday, a schedule based on potential buying power of the territory and see how it stacks up with our goal.

[I think that we might not be too far wrong in going along with him on this basis but, of course, he should thoroughly understand that it would be an exception and time would have to clear it up and that, very definitely, we would not issue a permanent contract to him on any basis which would be contrary to what the other 27 plants are working on.] In other words, I believe that we might be able to compromise with him on the basis that he would come in on a gradual absorption of his private brand goods, say over a period of eight years rather than three, but, very definitely, when it got to the eighth year it would have to be all Sealy. This is a thought that I came upon while on the plane last night and is one that I think has some merit and which I would like to discuss with the committee next week. I would need, though, the information as to the potential sales volume based upon our sales management figures.

Regards, E. H. Bergmann.

EHB:ht

[fol. 645E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 299

August 18, 1952.

Peerless Mattress Co., Inc.
Lexington, North Carolina

Attention: Mr. J. V. Moffitt, Jr.

Dear Mr. Moffitt:

I will try to answer as specifically as I can the items raised in your letter of August 4th in regard to the possibility of your company acquiring a Sealy franchise in the North Carolina and South Carolina area.

Our contracts are written for a period of three years. Upon the end of the three years, and upon the satisfactory performance of the company holding the franchise, a five year renewal contract is then offered. Upon completion of the five year period, and upon the satisfactory performance of the company holding the franchise, the contract then becomes perpetual as long as the performance of the franchise holder is acceptable to the Sealy board of directors. It would take a two-thirds vote of the full board of directors to terminate a franchise after the eight year period has passed. We feel that this arrangement gives full protection to the franchise holder and, also, gives a protection to Sealy, Incorporated that we feel they should have.

At a meeting of the Executive Committee of Sealy, Incorporated last week, the Committee expressed themself as not being in favor of writing any contract that would not provide for the regular basis of royalty payment when the contract goes into its perpetual period. We do not have any contracts out other than the same basis as the sample contract you have in your office. All of our members are paying us 3% on bedding sales, whether they be Sealy or private brand, except that they are paying 1% on low-end goods; namely, cheap cotton platers and blown beds. They do not pay any royalty on items that they job unless this item carries the Sealy label.

The Committee expressed themself in favor of making a

special arrangement with your firm similar to the basis I discussed with you, but over a longer period of time. They feel that your contract should call for a 3% on Sealy sales [fol. 646E] at all times, but on the first year there would be no payments on your private brand sales. On the second year of your contract, they would expect one-half of 1% on your private brand goods and that this would increase to 1% during the third year. They propose that the payment of the private brand sales be increased one-half of 1% each year until such time as you reach the regular basis. This basis would be reached during your seventh year with the Sealy franchise.

I believe you will find that you will not be paying a penalty on your private brand sales as each year you will be selling more merchandise under the Sealy brand. Any royalty that you may pay will be offset by the increased gross profit that you can obtain by selling branded merchandise.

At this writing we cannot propose additional territory for you other than that outlined on my recent visit. There is a possibility that we can include the counties of Pitt, Beaufort, and Palmico in the State of North Carolina. The other counties that you mentioned are in the Richmond contract and Mr. Sutherland does not wish to surrender additional counties and we do not feel that we should disturb our contractual relationships by insisting that this small additional territory be taken from him. I think you will agree that our action in the matter is not unreasonable.

The area you will have under franchise should produce potential Sealy sales close to $1,000,000 per year. In order to attain this figure you would have to go into the manufacture of some upholstered pieces that are selling well in your area.

The annual royalty mentioned in Section V of the contract is the annual minimum royalty expected from the franchise holder. Our present franchise holder is paying us royalties on about $250,000. of sales per year, and we would expect to receive a minimum royalty of $7,500. a year after you have had a chance to organize your production and selling. I do not think it is unreasonable to expect that this amount should be effective during the third year of the contract. We would require no minimum during the first year

of your operations, and a minimum of $5,000. for the second year of your operations.

[fol. 647E] Everything seems to indicate that this is an opportune time for your company to become associated with the Sealy group. I think you realize what the group operations can bring to you in the way of added sales and profits. While the territory we have open does not include every county that you desire, it does cover the major portion of the territory that you would normally serve. The royalty set-up is not a difficult one as it will work out much quicker than you anticipate, and returns that you will receive from the franchise will more than compensate you for the royalty requested on your private brand sales.

I trust that you will consider the matters outlined in this letter closely and that you will decide to take the franchise effective October 1, 1952. If we are to enter into a contract with your company, we would like to have your decision reasonably prompt so that we may notify our present associate so that he can make his plans. The rumors of our association with your company have caused him much concern. We have told him frankly that we have been negotiating with your company, but in all fairness we must come to a decision one way or the other.

I know this is a vital decision to make on your part, but I think the integrity and reputation of those firms that are associated in our group would enable you to make a favorable decision for both of us without any misgivings on your part.

Hoping to hear from you soon and with personal regards, we are,

Yours sincerely, Sealy, Incorporated, J. R. Lawrence.

JRL:ht

[fol. 648E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 300

PEERLESS MATTRESS COMPANY INCORPORATED

Lexington, North Carolina
"Peerless" Quality Bedding
Phone 572

November 11, 1952.

Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Mr. Lawrence:

Mrs. J. V. Moffitt, Sr. who is President of this company will be back in Lexington on Saturday morning of this week. If you will make the following corrections to the contract and have it back in our hands at that time, we will get it signed and the writer will either return it to you immediately or will bring it when he comes to Chicago next week.

1. Please make the contract for Peerless Mattress Company, Inc. instead of for Peerless Manufacturing Company.
2. On page 3 please show the territory as follows:
   a. All of South Carolina and all of North Carolina except the following:

      Allocated to Sealy plant in Richmond

Bertie County	Martin County
Camden County	Nash County
Currituck County	Northampton County
Dare County	Pasquotank County
Edgecomb County	Perquimans County
Gates County	Tyrrell County
Halifax County	Vance County
Hertford County	Warren County
Hyde County	Washington County

Allocated to Sealy in Bluefield, W. Va.

Alexander County	Burke County
Alleghany County	Caldwell County
Ashe County	Catawba County
Avery County	Rockingham County
Stokes County	Surry County
Watauga County	Wilkes County
Yadkin County	

[Giving us Pitt, Beaufort, Pamlico Counties, per your letter 8/18 page 2. Our Whse is in Pitt County.]

b. It is further understood that licensee may sell Sealy merchandise in the state of Georgia until such time as a separate licensee for that state is secured.

3. On page 10, please cross out that line indicating that the expense of the engineering service on the yearly visit will be paid for by licensee. It is our understanding that this one visit is a *free visit*.

[fol. 649E] 4. On page 13 and 13A please indicate that there is to be no royalty on blown cotton mattresses or pads from blown material. Please also indicate that Peerless Mattress Company will pay no royalty on plated and felt mattresses, Rollaway Springfilled mattresses, of its own manufacture, until 2½% royalty applies to its other products. Then the royalty will be ½% the first year, 1% the next year.

We assume that all of the above is agreeable to you. This is in line with our last conversation of Wednesday and Thursday, August 27/28.

Yours very truly, Peerless Mattress Company, J. V. Moffitt, Jr.

[fol. 650E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 300-A

November 13, 1952.

Air Mail Special Delivery

Peerless Mattress Company, Inc.
Lexington, North Carolina

Attention: Mr. J. V. Moffitt, Jr.

Dear Joe:

I am sending you this letter by air mail special delivery along with the contract. We have changed the style of the company from Peerless Manufacturing Company to your correct corporate name. Also, we have listed the territory that we can allocate to you at this time.

You have requested some additional insertions in your contract that we cannot insert, and I will give you the reasons on each specific item.

In my letter to you of August 18th, 1952 in the third paragraph on Page 2 I stated that we could not propose additional territory to you other than that outlined on my visit to Lexington. I did state that there was a possibility that we could include the counties of Pitt, Beaufort, and Palmico in the state of North Carolina. These counties are in the Richmond contract, and I am quoting below a copy of the letter we have received from Richmond in response to our negotiations with Mr. Sutherland regarding the release of these counties.

"I have gone over the North Carolina territory which is served by me in my new contract and I find that in most of the counties which you name that you think namely should be served from Richmond such as Warren, Halifax, Northampton, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden and Currituck. Wish to state that in all of these counties there are only three towns of any importance; Elizabeth City, Roanoke Rapids and Henderson. In the other eleven counties in North Carolina which are in

my regular territory according to the new contract are my best towns such as Rocky Mount in Nash County; Tarboro in Edgecombe County; Greenville in Pitt County; Plymouth in Washington County; Washington in Beaufort County and Williamston in Martin County.

[fol. 651E] "We are selling accounts in all of these towns and it is our intentions to instensify our efforts in this area maybe by putting on a regular route delivery truck.

"We are also in the midst of trying to make arrangements in Richmond to develop our plant to a one story affair and if I get the proposed plant I will need all of my present territory to keep me busy.

"You know that my thoughts are sincere in helping Sealy but I do not feel that I can relinquish any of my present territory especially if I get the new proposed plant.

"If you will refer to Sealy's list of the potential sales schedule of the United States you will find that Richmond is the second to the lowest on the list having 1.3659 percentage. In view of these circumstances I do not see how I can relinquish any additional territory to Carolina.

"The only possible change which I feel I can be justified in making would be to turn over two or three of the counties in the extreme southern part of Carolina such as Palmico and perhaps Beaufort and Pitt but in order to relinquish this territory I feel that I should make a deal with Sealy and Joe Rudick in the northern part of Virginia and that the counties of Prince William and Fauquier should be included in the Richmond territory. In reference to the two Richmond area counties in the Eastern Shore known as Northampton and Accomac I am still willing to concede these to the Baltimore territory.

"If I relinquish the two Eastern Shore Counties in Virginia to Baltimore and receive the two counties in Northern Virginia from Baltimore and relinquish the three counties named in extreme south eastern North Carolina to Lexington then my percentage of potential sales in the United States would be cut considerably. I would then be somewhere in the neighborhood of 1.2500 which would throw Richmond into the smallest potential purchasing power of the whole outfit. However to enhance the prospects of Sealy I am willing to consider the above."

From the above letter you can see that Mr. Sutherland would only relinquish the counties of Pitt, Beaufort, and Palmico if we are to make a swap in the Baltimore contract as he outlined. As of this writing, we have not as yet been successful in negotiating this change, although I still think there is a possibility of doing this—perhaps at the coming November convention. If we can make the swap then the three counties will be added to your contract. We could, if [fol. 652E] we wished, take an arbitrary stand with both Richmond and Baltimore in regard to the territory, but that is not our method of operation. We will not disturb a contract in regard to territory unless it is a mutual agreement brought about by negotiations with the contract holder. I don't think there is any question as to the correctness of this procedure even though some territory requirements are of vital interest to the licensees.

We are agreeable to have the Peerless Mattress Company sell Sealy merchandise in the state of Georgia until such time as a separate license for this state is secured.

The reason that Paragraph IV;6 as outlined on Page 9 and 10 is in our contract is for the reason that we must maintain a Sealy engineer for service to our licensees. In order to keep a well qualified engineer in our employ we must pay him a salary that would be burdensome to the corporation unless part of his services would be utilized by the plants. Theoretically, if 26 plants will agree to use his services for one week, then this corporation would have the burden of carrying his salary for the other half of the year on services that are performed free of charge to the licensees.

Actually, we have never exercised the right contained in this paragraph, as our present arrangement with Mr. Guckert utilizes his services only six months out of a year. So far there has been no necessity for us to demand that a plant use his services unless they actually need and want them. We cannot change our contract inasmuch as we do not know how long our arrangement with Mr. Guckert will project into the future.

I told you that the first visit of Mr. Guckert to your plant would be made free of charge. This statement still holds true and covers the first visit that Mr. Guckert will pay to

your plant, whether it be for a week or two weeks. We do not count the one or two days that he has been there or will be there until you are actually in corporation on Sealy merchandise. After that visit, should you want Mr. Guckert at your plant for other than regular inspection visits, then we would expect to be paid for his services.

In regard to the royalty to be paid as outlined on Page 13 and 13A we have not indicated the 1% royalty arrangement inasmuch as this is by action of the board of directors and is applicable to all contracts in force. At the time of making their action the board did not wish to make a change in the contracts, but this policy will remain in effect unless [fol. 653E] changed by action of the board of directors. It is not our intention to collect any royalty on Blown Cotton mattresses or pads from blown material sold under your private brand.

In regard to the royalty to be paid on plated and felt mattresses, Rollaway Springfilled mattresses, and so forth under your own brand, you may use this letter as our agreement that no royalty will be paid on these items until the 2-1/2% royalty applies to other products. At that time, it is agreeable that royalty on these items will be one-half of 1% the first year, and 1% the next year. This agreement is binding with our company even though it is not in the contract.

The contract is not all comprehensive as it would take many more pages to list all of the operating relationships between this office and our licensees. The contract is long enough as it is, and the other matters are in effect by action of the board of directors, which is comprised of men holding the same type of license that you will hold. The present agreement of a 40% advertising allowance based on 50% of the moneys you spend on Sealy in your area is not in the contract, but it is a policy that has been approved by the board and is an operating function of our business. This 40% figure may be increased or decreased by board action in the future, but the 40% figure has been in effect since before 1940.

Joe, I know that a sharp attorney will tell you that all agreements should be down in writing, but by the same token a sharp attorney would probably not approve of the

type of contract you are asked to sign. You are dealing with an honorable company and with honorable people that comprise the board. Their contracts and their businesses are essentially no different from yours, and they will not take any action or do anything that would be detrimental to the general welfare of the group operation. A contract is only good as the parties behind the contract, and I think you will agree that we have some mighty fine people in our organization.

I hope that you and your father will approve the contract as written and that you will bring it with you to the meeting. If there are any questions that are not answered please give me or Mr. Bergmann a call in Chicago next week.

Regards. Yours very truly, Sealy, Incorporated,
J. R. Lawrence.

JRL:ht

[fol. 654E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 301

PEERLESS MATTRESS COMPANY INCORPORATED

Lexington, North Carolina
"Peerless" Quality Bedding
Phone 572

November 25, 1952.

Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Attention Mr. J. R. Lawrence

Dear Roger:

I was in a hurry to catch the plane to New York, and therefore, simply left the contract with Mr. Bergmann. I am exceedingly sorry that I did not get to tell you good bye but you were at that time engaged in distributing checks to the various Sealy licensees, and I am sure that neither you nor they wished to be disturbed in that endeavor.

We are of course considerably dissappointed that, unless you can make arrangements with the other Virginia licensee, Richmond will not be willing to give up Pitt, Beaufort, and Palmico counties. Of course Palmico county means nothing. However, Beaufort county does have some of our very best customers, purely and simply because the fact that we maintain our warehouse in Greenville in Pitt county. We can tell you that we did $200,000 business at the Greenville, North Carolina warehouse, on bedding items only, during the past year. Therefore, we think that we probably can do a much better job for Sealy, Incorporated in Pitt county and in neighboring Beaufort county, than can a Richmond factory.

Therefore, we would like for you to continue in your efforts to work out a mutually satisfactory exchange of territory.

In connection with the above, we are not at all certain that we definitely wish to do this, but it has occurred to us that we might consider transferring Wilson county, which contains the relatively large city of Wilson, to Richmond in exchange for Pitt, Beaufort, and Palmico counties. You might bear this in mind but please remember that we are simply toying with the idea of that exchange and we are not at all certain that we wish to definitely offer it; as a matter of fact we do very little business in Wilson, for one reason or another, and that might be a perfect town in which we could really concentrate on Sealy items, without hurting the present Peerless sales at all.

With kind personal regards,

Yours very truly, Joe V. Moffitt Jr.

[fol. 655E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 302

December 24, 1952.

Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Attention: Mr. Sidney Sutherland

Dear Sidney:

Our friend Joe Moffitt of the Peerless Mattress Company, Lexington, North Carolina is rather unhappy that we were not willing to give him the counties of Pitt and Beaufort in North Carolina. As you probably know, he operates a warehouse in Greenville in Pitt County, and last year did about $200,000.00 in bedding business out of that warehouse alone. He feels that he could do a real job for Sealy in and around Greenville, North Carolina, and I believe he could.

I am wondering if the County of Wilson would mean more to you than the County of Pitt. The city of Wilson is about the same distance from Richmond as Greenville, and may have some interest to you. I think Joe would like to swap you Wilson County for Pitt County on account of his warehouse.

When you will be in High Point next January, possibly, some of this territory discussion will come up, and if you think there is anything you can do on it let me know.

Personal regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:ht

[fol. 656E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 303

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 52845
8 South Harvie Street

December 29, 1952.

Mr. J. R. Lawrence
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I have your communication of December 24th in which you refer to the situation of Joe Moffitt in reference to Carolina territory particularly the counties of Pitt and Beaufort.

Before going into this matter in detail I want to say to you (a copy of this letter is also being sent to Earl) that I think that you have always found me quite cooperative in trying to be helpful to anything pertaining to Sealy, Incorporated. In the old days of John Brodie, Earl may recall that I relinquished a lot of territory in the western part of Virginia including the major city of Roanoke to assist in carving out a satisfactory territory for Jack Metcalfe. Again recently I relinquished two counties in Northern Virginia to Joe Rudick in Baltimore when I had a specific letter from you stating that the account of the Manassas Furniture Company belonged to Richmond. I interpreted this letter as meaning that it was a permanent part of Richmond's territory. However, rather than have any upset or discretion in the matter with Joe Rudick and Sealy I relinquished my rights in this area. So, I think you must agree with me that I have at all times been very cooperative towards Sealy.

If you will refer to your report of June 1, 1952 showing the percentage of United States of America potentialities you will find that Richmond has only 1.3659 percentage of United States of America potentialities which is the next to the smallest area in the entire United States. Only one location being listed smaller than Richmond and that is Charlotte, North Carolina with potentiality of 1.2492. I believe that with the North Carolina open territory which shows on this same list as .7751 will be added to Charlotte making Charlotte a little over 2.0000. Therefore, with this change [fol. 657E] effected Richmond will be in last position in reference to potentialities of the United States of America.

I can see Mr. Moffitts position and recognize his situation and I also see the position of Sealy, Incorporated in the matter of Greenville, North Carolina which is in Pitt County and at which point the Peerless Mattress Company maintains a warehouse. I further agree with you that under these circumstances the Peerless Mattress Company can do and probably will do a better selling job for Sealy, Incorporated in this county than we can do from Richmond. So, I am again willing to make some concession to the Peerless Mattress Company and Sealy, Incorporated on a basis of swapping equal territory as I feel that Richmond's area is small enough and should not be lessened to any extent.

In view of all of the above circumstances I am willing to concede the following counties to the Peerless Mattress Company as permanent territory of the Peerless Mattress Company, Lexington, North Carolina for a swap of the following counties in North Carolina which will become a permanent part of the Richmond territory.

The counties of Pitt, Beaufort, Hyde, Dare, Tyrell will be swapped to Peerless Mattress Company for the counties of Wilson, Franklin and Granville. These last three counties to become a permanent part of the Richmond territory.

I think if you will look at the map you will find that both Granville County and Franklin County are nearer to Richmond than they are to Lexington, North Carolina.

If Mr. Moffitt is not willing to trade counties on the basis outlined above I will make another concession to Sealy, Incorporated providing Sealy, Incorporated will make a concession to me from the Baltimore area. Again, I will con-

cede to the Peerless Mattress Company, Lexington, North Carolina the counties of Pitt, Beaufort, Hyde, Dare and Tyrell for two counties in Northern Virginia, Prince William County and Fauquier County. I believe that if the matter is properly approached and put up to Joe Rudick in the proper manner that Joe may be willing to concede these two counties to Richmond for the sake of harmony in Sealy, Inc. and if it will help the situation with Joe Rudick in any way in addition to all the above I am willing to concede to Baltimore the two Eastern Shore Virginia counties of Accomack and Northampton. I feel that this is quite liberal on the part of myself in Richmond and I assure you that anything that Sealy works out on the above mentioned basis with Joe Moffitt of Lexington and/or Joe Rudick of Baltimore that you have my assurance that the deal can be [fol. 658E] consumated.

In the meantime Best of Luck.

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

cc: Mr. E. H. Bergmann Cleveland, Ohio

[fol. 659E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 304

Dict. 1/21/53.
January 23, 1953.

Mr. Joseph Rudick
Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Dear Joe:

. . . . . .

I had a long discussion with Mr. Moffitt of the new Lexington plant, and, incidentally, this is going to be one of the outstanding plants in the Sealy group, and Mr. Sidney Sutherland relative to a compatible arrangement of territory so as to best fit into the geographic requirements of our plants and the logical completion of a harmonious national grouping.

I am writing this letter to you here so that it will arrive sometime before I get back to Cleveland when I will call you specifically regarding the two counties of which I shall speak to you about now.

In order for me to work out an arrangement satisfactory to our new people in Lexington, it is going to be necessary for me to extract about five more counties from Sidney Sutherland. In return for these five counties, I will have to ask you to give to Sidney the two counties that we have had some correspondence about before, the names of which have slipped my mind at the moment, but I do remember that they do include the town of Manassa. I know that this name will ring familiarly to you.

. . . . . .

[fol. 660E] Yours very truly, Sealy, Incorporated, E. H. Bergmann

EHB:hlt

[fol. 661E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 305

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Baltimore 1, Maryland
Phone Mulberry 3972-3973
617-619 West Pratt Street

Franklin .042 Chambersburg
Fulton .003
Reading
Adams .022 Gettysburg

Baltimore 2.63 —.02
Richmond 1.36

January 26, 1953

Mr. Earl H. Bergmann
Sealy, Inc.
2012 W. 25th Street
Cleveland 13, Ohio

Dear Earl:

I am in receipt of yours of the 23rd relative to your problem with Lexington, N. C. and Richmond, Va.

I do not know why you had to take away five counties from Sidney Sutherland, but I certainly don't want to give up any of my small territory unless you want to add something else to replace it. You know as well as I do that our small towns are very few and we need them. We are making a real effort to build up this business and in fact I am now looking for a fourth salesman just to cover small towns because my present men do not get around often enough.

The two counties you have reference to in Virginia are Fauquier and Prince William. We are now doing business in that territroy.

The only way I would want to give up these two counties would be to get something else in return as you know we

have all of Delaware except one county, "New Castle" and all of Maryland except two counties "Alleghany" and "Garrett". These three counties would round out my territory and I would like them to replace these two counties to Richmond.

If you cannot or will not do this, then give me some additional territory from South Eastern Pennsylvania (supposedly covered by Reading but they are doing nothing there). Earl, please understand that we are expanding, not shrinking, so if you must do something, do something to [fol. 662E] help me and not to harm me. I will be waiting to hear from you.

Kindest regards.

Sincerely yours, Sealy Mattress Co., Joseph Rudick.

JR:mp

[fol. 663E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 306

Dict. 2/7/53.
February 9, 1953.

Mr. J. V. Moffitt, Jr.
Sealy of the Carolinas
Lexington, North Carolina

Dear Mr. Moffitt:

You are in receipt of copies of one or two letters which will indicate to you that the way has been cleared for the rounding out of the territory around Greenville in accordance with the general understanding between you, Mr. Sutherland, and the writer.

Mr. Rudick was very cooperative in making it possible to somewhat compensate Mr. Sutherland for his generosity and I'm sure that all three plants will profit by this congenial approach to a logical problem.

As I have indicated to Mr. Sutherland, I hope that you and he can quickly get together. either by phone or in person, and decide exactly on which counties you are going to switch back and forth, advise me, so that final transfers may be made.

I await advice from you gentlemen to the finalizing of this matter.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

cc: Sidney Sutherland.

[fol. 664E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 307

Dict. 2/7/53.
February 9, 1953.

Mr. Sidney Sutherland
Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Dear Sidney:

I am enclosing herewith a copy of a letter written to Mr. Joe Rudick of the Baltimore plant advising him of the confirmation of his agreement and willingness to the relinquishment of the two counties of Fauquier and Prince William in Virginia to become a part of your permanent contract.

A copy of that letter also was sent to the attention of Mr. J. V. Moffitt of Lexington, North Carolina and this letter to you, and the copy of the letter to Joe would indicate that all is now cleared for you and Mr. Moffitt to get together and personally agree upon the realinement of the contiguous territories.

Just as soon as you two gentlemen agree on the exact realinement of the bordering counties and you advise me officially of your agreement, the final transfers will be made, acknowledgment of the transfers will be given to you in letter form, and those letters will become a part of all of the territories under discussion.

I hope that you and Mr. Moffitt can immediately get together and come to an agreement as to the counties to be realined.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

cc: J. V. Moffitt, Jr.

[fol. 665E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 308

Dict. 2/7/53.
February 9, 1953.

Mr. Joseph Rudick
Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Dear Joe:

The letter just before this one that I dictated was a general letter indicating my appreciation of your cooperation and advising the licensees in Richmond and Lexington of the availability of the counties of Fauquier and Prince William to Richmond. That will make it possible for those two licensees now to get together and round out the territory necessary to set up a trading area around Greensville, North Carolina for the new Lexington people.

Copies of the first letter were sent to the other two people but no copies of this letter will be sent to them.

This letter is to confirm to you the agreement on the part of Sealy, Inc. to transfer to your permanent contract the counties of Franklin and Fulton in Pennsylvania. The Franklin County includes the city of Chambersburg. Actually, Joe, I think that you are much better off with Franklin County than the two that you gave up. Incidentally, the Franklin County has a buying power of .042 as compared to the combined .02 for the two counties mentioned.

I have already started my further negotiations with Reading in regard to Adams County, and I will try to get that for you also.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 666E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 308-A

Dict. 2/7/53.
February 9, 1953.

Mr. Joseph Rudick
Sealy Mattress Company
617 West Pratt Street
Baltimore 1, Maryland

Dear Joe:

This letter is to confirm to you the conversation that we had today relative to the relinquishment by you of the counties of Fauquier and Prince William in Virginia to be transferred to the exclusive territory of the Richmond plant.

This fine cooperation on your part makes it possible for Sealy, Incorporated to adjust and equalize the allocation of exclusive territory between the Richmond, Virginia licensee and our new people at Lexington, North Carolina.

The writer wants to personally thank you for your fine cooperation and I am quite sure that our other people will also be appreciative of your cooperation because it will make possible a logical realinement of the territories which can only spell better representation on a national basis. Likewise, it will tend to give us the strongest possible front in our common problem of selling Sealy merchandise in normal trading areas.

Just as soon as we have concluded the entire realinement, we will advise you officially and attach the official advisement to the respective contracts.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

cc: Sidney Sutherland,

J. V. Moffitt, Jr.

[fol. 667E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 309

Dict. 2/7/53.
February 9, 1953.

Mr. T. C. Engelhardt
Sealy Mattress Company
107 Chestnut Street
Reading, Pennsylvania

Dear Ted:

I have just returned from a meeting with our new people in Lexington, North Carolina and I find that it is necessary to juggle around some of the territories in order to fill in the more or less established selling range of the new Lexington licensee.

I find that we are going to have to extract about three counties from the Richmond territory in order to round out Lexington. It is going to be necessary to take about two counties from Baltimore and give them to Richmond to balance up with him.

I have been looking at the territory of Harrisburg and I am wondering whether you would be agreeable to my request of relinquishing Adams County so that I could give this to Baltimore as a partial reward for two rather good counties that I have asked him to give to the common cause.

I'd appreciate having you drop me a line, Ted, as to whether or not you would be willing to help me out in this matter.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 668E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 310

Dict. 2/16/53.
February 17, 1953.

Mr. J. V. Moffitt, Jr.
Sealy of the Carolinas
Lexington, North Carolina

Dear Mr. Moffitt:

I am in receipt of a letter from Mr. Sutherland of the Richmond plant advising me that he has given you the counties of Pitt, Beaufort, Hyde, Dare, and Tyrrell.

If this concludes the satisfactory rounding out of your territory, I would appreciate having you drop me a line and we will make the necessary and finalized changes.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 669E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 311

February 20, 1953.
Dict. 2/19/53.

Mr. J. R. Lawrence

Dear Roger:

I am in receipt of a letter from J. V. Moffitt stating that he is agreeable to the transfer of the five counties to his territory which were given to him by Mr. Sutherland.

Inasmuch as we have had letters from all three of the licensees involved, I believe it is satisfactory to officially make the transfers and to indicate same on the respective contracts.

Regards, E. H. Bergmann.

EHB:hlt

[fol. 670E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 312

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 52845
8 South Harvie Street

February 12, 1953.

Mr. J. R. Lawrence
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I am enclosing you copy of letter which I have today sent to Earl Bergmann. You will get a confirming letter from Mr. Joe Moffitt at Lexington and probably a confirming letter from Joe Rudick at Baltimore. So, we are going ahead and serve the two norther counties in Virginia at once and will discontinue the solicitation of Sealy business in the five counties named in North Carolina. At the convenience of Sealy, Incorporated we would like to have this definitely confirmed so that we can attach it to our contracts.

With kindest regards and best wishes, we remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

encl.

[fol. 671E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 313

February 12, 1953.

Mr. E. H. Bergmann
Sealy, Incorporated
2012 West 25th Street
United Office Building
Room 418
Cleveland 13, Ohio

Dear Earl:

I conferred on the telephone yesterday with Joe Rudick and also Mr. Joe Moffitt. I thanked Joe Rudick for conceding to me the two counties in northern Virginia of Prince William and Fauquier and I agreed with Mr. Joe Moffitt that Richmond would concede to him in North Carolina the two counties which he asked for, namely; Pitt County and Beaufort County. But, I also told Mr. Moffitt and he accepted the three additional counties in Eastern Carolina of Hyde, Dare and Tyrrell. Therefore, I am giving to Mr. Joe Moffitt of Lexington five counties in North Carolina for exchange of two counties in Virginia. I think this arrangement is satisfactory to everybody concerned and I am sincere in saying that I believe it will work to great advantage to Sealy, Incorporated as well as the individual plants.

With kindest regards, we remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

cc: Mr. J. R. Lawrence

[fol. 672E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 314

February 16, 1953.

Mr. Sidney Sutherland
Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Dear Sidney:

Since this letter refers to the territories involving the plants of Lexington and Baltimore, I am sending copies of this letter to the principals at those locations.

Baltimore is to surrender to Richmond the counties of Prince William and Fauquier in Virginia.

Richmond is to surrender to Lexington the counties of Pitt, Beaufort, Hyde, Dare, and Tyrrell in the State of North Carolina.

We are marking our records and contracts on this change. We ask each plant involved to confirm the change to this office.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:lht

cc: Joseph Rudick, J. V. Moffitt, Jr.

[fol. 673E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 315

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 52845
8 South Harvie Street

February 19, 1953.

Mr. J. R. Lawrence
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

I have your communication of February 16th and in reply to your letter concerning the swapping of territory between Baltimore and Richmond and Richmond and Lexington wish to confirm that Richmond is surrendering to Lexington the Counties of Pitt, Beauford, Dare, Hyde and Tyrrell in the State of North Carolina and for exchange of these counties Baltimore is surrendering to Richmond the counties of Prince William and Fauquier in Northern Virginia. Thanks for all of the above.

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

[fol. 674E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 316

Dict. 3/4/53.
March 6, 1953.

Mr. T. C. Engelhardt, Sr.
Sealy Mattress Company
Front & Chestnut Streets
Reading, Pennsylvania

Dear Ted:

I note that you are back from your vacation and I'm happy to hear that you had a nice time and I'm sure that you will be in a state of health to permit you to carry on in the vigorous manner in which you are accustomed to performing.

I note what you say regarding the size of your territory and really, Ted, the request from you of Adams County was purely for the purpose of rounding out the territories and no consideration was given as to the respective size of the territories involved. As a matter of fact, Richmond territory, which is smaller than yours, was requested to give up five counties in order to round out our new people in Lexington, North Carolina and they gladly did so in spite of the fact that they have the smallest territory in our group.

In return for the five counties that Richmond gave up, I procured three counties from Baltimore which helped Richmond in a spot where they would normally do a fairly good job, yet it was still within the normal trading area of Washington.

When Roger and I spoke to you about your territory a year or two ago you showed no interest whatsoever in the open territory and if I remember correctly you even turned it down. I did not have any idea that you had any interest in the open territory because I would have been very glad to have discussed it with you, and as Roger and I indicated to you at that time that we were with you, there is no reason why you should not have the territory, certainly you should be entitled to work it on a free basis if you wish to do so.

In order to help the situation with Baltimore, I have assigned to him the two Pennsylvania counties of Franklin and Fulton. I looked at these counties for some time before I gave them to Joe and I did so based upon two thoughts; [fol. 675E] number one, that you were not active over in that part of the country and, number two, that Baltimore was very active in the Hagertown district and could easily take care of Fulton and Franklin and that the distance was about the same from Baltimore as it would be from Reading.

The actual amount of business involved so far as Franklin County is concerned is not great because based upon our yardstick of sales pars it has only .02 of the United States potential and this applied against the Sealy sales for 1952 would indicate that the 100% par of that county would be about $5,000.00. I did not think that this was too important so far as your territory was concerned, considering distances and other matters, but it would be of some benefit to Joe. If you have a man working the territory and you're getting the amount of business out of the county that it should produce, then that is all we can expect. If, on the other hand, you are not working it and you're not getting the amount of business that it should produce and it's too far away or lies in a spot that is not too easy to cover, then the transfer to another territory is the thing that should be done to try to strengthen our deal nationally at all times.

Any time that you want to discuss the other counties which remain open, I would be very happy to do so.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 676E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 317

Dict. 8/28/52.
August 29, 1952.

Sealy Mattress Company
5914 Federal Street
Detroit 9, Michigan

Attention: Mr. Peter D. Brown

Dear Pete:

I have been working with Morry Kaplan on the tier of counties which is adjacent to you, and I think we have it fairly well worked out that he will transfer to you three counties. They are: Jackson, Saginaw, and Shiawassee. Morry feels that he cannot give up Ingham County, which embraces Lansing, because of the amount of business they are doing there and the fact that this seems to be more or less of an anchor point for a considerable amount of business west of Lansing.

I hope to have this entire matter finalized next week when McGillvray returns from his vacation. Just as soon as I get the final word I will let you know and then we can make the transfer official.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 677E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 318

August 16, 1954.

Mr. Morris A. Kaplan
Sealy Mattress Co.
903 North Halsted St.
Chicago, Illinois

Dear Morry:

This letter is being written to you while you are on your vacation but I thought that inasmuch as a fellow always comes back from his vacation lean, fit and willing, that it would be a good time to have it awaiting your return so as to catch you in the pink of condition.

Morry, I am referring to the matter of the 5 counties in Michigan which have on several occasions been discussed as being assigned to the Detroit plant. You recall that during the meeting in Miami the contract for Wisconsin and Michigan was renewed for a year with the proviso that a committee be appointed to consider the advisability of an immediate transfer of the 5 counties to the Detroit territory.

Now that you are extremely busy and can see the volume of business that is to be had in your combined territories, I am wondering if you have not come to the personal realization yourself that to assign these 5 counties to the Detroit territory would be the proper thing to do and could be done without any loss so far as your plant is concerned.

Between you and me, I think that Pete is entitled to some additional territory to give him a little elbow room to work in, particularly during times when there is a period of stress in a large city such as Detroit. He being divested of almost any country territory is in a rather tough spot under such condition of times. These 5 additional counties I think could help him a great deal and actually I personally believe that owing to their nearness to Detroit and the dis-

tance from Chicago that actually the Detroit plant could obtain much greater sales from them.

This is a problem that I hate like the devil to have to appoint a committee on and if it could be cleared up without going through that step, I thin.. it would be the best all [fol. 678E] around for an esprit de corps of our organization.

I would like to hear from you on this subject as to your thoughts.

Personal regards.

Very truly yours, Sealy Incorporated, E. H. Bergmann.

EHB/rl

[fol. 679E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 319

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois

September 15, 1954.

Mr. E. H. Bergmann
Sealy Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

Your recent letter regarding the old Milwaukee territory has been handed to me by Mr. Kaplan for an answer, without any explanation.

I have a feeling this was done because for the past six years I have had nothing but gentlemanly pressure from Mr. Kaplan and yourself because this part of our trading area was pitifully below the Sealy sales par figures.

In your letter, you referred to July shipments of over $90,000.00; and I would like to tell you now that the August figure is in excess of $123,000.00. Of course, if we can maintain this kind of volume through the balance of the year, we will far exceed the commitments Mr. Kaplan made to you in Miami in the spring of this year.

I am now hopeful we will hear no further comment about dissecting this territory and giving portions of it to other Sealy plants or a new Sealy plant.

At long last, I think we now have the right formula going for us consisting of: the right promotional merchandise . . . . the right personnel . . . . Sealy power generated and directed . . . . and "the usual Kaplan Mazol."

"Sin-Sealy" yours, C. B. McGillivray, Sealy Mattress Company.

CBM:H

[fol. 680E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 320

Dict. 9/25/54.
September 28, 1954.

Mr. C. B. McGillivray
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Dear Mac:

This is the first opportunity that I have had to answer your letter of September 15th in answer to my letter of August 16 to Morry relative to the five counties that I have been trying to convince you two boys should be given to Pete Brown.

Mac, I agree with everything that you say about apparently having found the right formula for covering Wisconsin and Michigan, but I still maintain that those five counties can be much better handled by Detroit.

Actually, in the very first place, the should have been in the Detroit orbit. Why they were not, I do not know, but this thing was boiling when I took over J. R. Haas' job some seven years ago.

I had hopes that I would not have to personally ask you and Morry to give up those five counties, but apparently I am going to have to do so. I am asking that the five counties be given to Pete for three reasons. First, I think they can be better serviced from Detroit and the loss of them will not make too much material difference as far as the Chicago plant is concerned, because I feel that you have plenty of territory in which to work, and this is not the case of the Detroit plant. The Detroit plant needs some country territory for the purpose of having a little elbow room, and also to offset business conditions which you and I know so frequently plague Detroit because of the high concentration of one industry in that city.

The second reason that I am asking that you give these

counties to Pete Brown is because I think it will help to keep peace in the family.

The third reason I feel that I am not being unjust in asking for these five counties is because of having given to the Chicago plant a territory embracing Indianapolis which [fol. 681-E] I had envisioned initially as the location of a private plant. I think this territory more than offsets value of those five counties.

Personal regards,

Sealy, Incorporated, E. H. Bergmann.

EHB/rl

cc: Mr. M. A. Kaplan

[fol. 682E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 321

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois

October 6, 1954.

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland, Ohio

Dear Earl:

I have your letter of September 28th in response to my letter of September 15th regarding the five counties in Michigan.

In your letter, you say "I am going to have to ask you to give up these five counties". At that point, it seems to me that I have no right to be in this situation and have asked Morry to step out, giving him the following thoughts for him to consider:

1. I made a deal with Bob Byrnes, who covers Grand Rapids and these plus two other counties only. Bob is a high-powered man whom I sold based upon the potential in the area as well as the advertising that we were going to use as an umbrella for him to function with. My discussions with him envisioned making a certain amount of progress at the end of the first year, which is December 31st. Bob has actually delivered more business than we envisioned when we discussed this last December.

2. In particular, Bob has done an enthusiastically encouraging job in Lansing. Lansing, too, you must remem-

ber is about 25 miles closer to Grand Rapids than it is to Detroit.

3. This is also an important point because we have done a considerable amount of television advertising out of Battle Creek, which covers both the Lansing and Jackson areas. This goes back to the national shows and more costly shows in the form of TV spots that we have run consistently for the past year and have contracted for way into next year, although I know these are cancellable.

The loss of these counties, and particularly the loss of the Ingham and Jackson Counties, are going to present us with real representation problems as a very brief study [fol. 683E] of this Grand Rapids territory will reveal. If you've ever been up in Upper Michigan, which includes the Peninsula as well as Upstate Michigan, you know that what you are talking about is an area that is very much like Colorado because if you take the trees out you have damn little left.

Outside of Grand Rapids, with a population of about 175,000 people, the territory is made up of a few cities like Muskegon, Lansing, Jackson, Battle Creek and Kalamazoo. The southern counties are part of the Indiana territory and in the South Bend orbit, where we are contemplating establishing as a delivered point. No matter what happens, we want to be able to hold good representation for the Grand Rapids warehouse handling so that we can afford two top-flight men in this territory.

Best regards.

Yours very truly, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:mk

cc: M. A. Kaplan

[fol. 684E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 322

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois

October 7, 1954.

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland, Ohio

Dear Earl:

I have copy of your letter of September 28th to Mr. McGillivray. This is with reference of turning over the five counties in Michigan to Pete Brown.

Apparently, you have forgotten about the actual discussion that was held at the last Directors Meeting in Miami. You will recall that the Milwaukee and Grand Rapids area license was up for renewal on a permanent basis.

I don't recall whether you recommended the renewal to be made on any kind of a basis at all, but, for the moment, that is beside the point. I did state that we expected to ship approximately $700,000 of Sealy merchandise into the Milwaukee territory during 1954 and that we were going to expend a great deal of money in advertising in that area during that period. I believe a motion was then made that the contract be extended for one year, with the provision that the five counties in Michigan that are contiguous to the Detroit area be reviewed at the same time our contract renewal was reviewed.

It seems to me only fair that we have an opportunity to review our progress in the Milwaukee territory, in general,

and in these five counties in specific, for this year, since our primary concern here is Chicago's investment in the Milwaukee territory. Pete Brown's problems are our secondary consideration, in spite of the fact that we are very sympathetic with his problems and his position.

Under the circumstances, you can see that we are interested in the over-all problem of our entire Milwaukee territory rather than the specific problem of the five coun- [fol. 685E] I don't know whether our figures will be far enough along and whether our results will move so quickly ties adjacent to the Detroit area.
that we will be able to take our figures through October and present them to the Board at the November meeting so that the contract is reviewed prior to the March meeting (which was the decision of the Board at the last March meeting in Miami). If they are, I see no reason for not reviewing our position at that time and not wait until the March meeting. If they are not, however, it may be necessary for us to ask for sufficient extension of time to prove up our ability to take care of the territory as the Board indicated to me and I indicated to the Board in March in Miami.

I hope this clarifies our position in this situation.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: C. B. McGillivray

[fol. 686E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 323

October 11, 1954.

Mr. C. B. McGillivray
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Dear Mac:

This acknowledges receipt of your letter of October the 6th relative to the five counties in Michigan.

First may I take this opportunity of thanking you for the nice friendly letter that you wrote and the clear outline of the problems that this proposal creates for you.

The more I become involved in intra-Sealy licensee problems the more I appreciate brother Truman and Eisenhower in the terrible job that they have been and are involved with. It seems to be a pure case of hell if you do and hell if you don't.

The sad part of [redacted] problem, so far as I am personally concerned, is that it appears that in the beginning a serious error was made in the limitation placed upon the Detroit plant. The more you look at it realistically the more you are convinced that originally the lion's share of Michigan should have gone to Detroit. How it ever got into the hands of the Milwaukee licensee I will never know but I suppose it was one of those things of the territory being open and that prior to the establishment of the Detroit plant nobody wanted it anyway and H. Marquardt prevailed upon Mr. Haas to give it to him. As in all of these matters it is always very difficult to try to correct or rearrange or reassign after the initial move has been made. It's like playing checkers, after you make a move you wake up two or three jumps later and realize you should have done something else but it's too late to do much about it.

One thing Mac, that I think you ought to do in order to at least give the Board and the executive officers a basis

for coming to some kind of a final conclusion is to give [fol. 687E] us a resume of your sales for the Michigan territory only for the period of time that you have had it broken down by years so that we can get a comparative of your efforts and progress. I also think that it will be necessary to give us this same information over the same period of time and the same number of years for the five counties. This information will be very interesting and possibly conclusive in what apparently a final decision will have to be made in order to at least relieve me of being constantly pressed for consideration of the segment of territory desired by the Detroit plant. Actually the desire I think is more than just a case of wanting a territory but I can see where the present territory of Detroit is so limited that they hardly have any elbow-room at all and they are terribly restricted as to a good balance between metropolitan and urban outlets.

I am wondering if you would be good enough to try to get this information for me well in advance of the meetings scheduled for the second week in November. I'd like very much to have it sometime around the 1st or 2nd of November. Would you please try to expedite getting the information for me.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/js

cc: Morris Kaplan, Chicago, Illinois.

[fol. 688E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 324

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois

October 29, 1954.

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland, Ohio

Dear Earl:

I am planning on having an analysis of our figures in the five counties of Michigan, that you have been writing to Mac and me about, so that we may discuss it sometime between now and the annual Directors meeting.

If you recall the meeting held this spring in Florida, you will remember that these five counties, together with a review of the Wisconsin contract renewal, was to come up in March of 1955.

Apparently, from the tone of your letters, you are getting a tremendous amount of pressure from Pete Brown over this handling and you may believe it wise to review this so that it be handled at the November meeting instead of waiting until next March.

If you can find some time between now and then—or sometime prior to these meetings—I would be very happy to discuss it with you.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

[fol. 689E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 325

SEALY INCORPORATED

Inter Factory Correspondence

Date: 1/12/55
From: J. R. Lawrence
Subject:—

Mr. Johnson

Dear Irv:

Will you please have our territory book corrected to show that the following counties have been transferred from the Chicago plant to the Detroit plant as of March the 1st, 1955. All inquiries arising from those counties will be referred to the Detroit plant after the above date rather than to the Chicago plant.

The following counties in the state of Michigan: Day, Jackson, Saginaw and Shiawasee.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/js

[fol. 690E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 326

January 26, 1955

Mr. Joseph F. Haas
Haas, Holland & Blackshear
First National Bank Building
Atlanta 3, Georgia

Dear Joe:

The Chicago plant has released the following counties in the state of Michigan to the Detroit plant; Bay, Jackson, Saginaw and Shianasee, effective 2/28/55

Both Detroit and Chicago have a permanent form of contract. It may be well that we prepare an amendment to their contract showing the change in the territory. We could possibly do the same thing by having them acknowledge our letter stating of the transfer.

What is your advice on the matter and should you recommend an amendment to the contract please prepare it so we can get both plants to sign it.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/js

[fol. 691E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 327

SEALY MATTRESS COMPANY

Makers of Finer Matresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

5914 Federal Street
Telephone Tashmoo 6-4700
Detroit 9, Michigan

June 9, 1956

Mr. Earl Bergmann
Sealy Incorporated
666 N. Lake Shore Drive
Chicago 11 Ill.

Dear Earl:

In the past few months I have mentioned both to you and Morry Kaplan the question of the Lansing area in the State of Michigan, which is supposed to have been finalized in February.

As a reminder, the original set-up agreed upon in February 1955, was to turn over the four counties in Michigan, and the Lansing area was held in abeyance until February, 1956 subject to par performance. If par was not reached during that 12 month period, it was supposed to have been turned over to the Detroit plant.

I feel at this date, there certainly should have been sufficient time for you to have the figures and to finalize this matter.

We hope this will be finalized by next week during the market when we are all in attendance.

Very truly yours, Sealy Mattress Company, Peter D. Brown.

PDB:rm

CC M. Kaplan

[fol. 692E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 328

June 12, 1956.

Mr. M. A. Kaplan
Sealy Mattress Company
903 North Halsted
Chicago, Illinois

Dear Morry:

You undoubtedly have received a copy of the letter written to me under date of June 9th by Pete Brown relative to the Lansing area in the state of Michigan.

The writer recalls the discussion as outlined in paragraph #2 of Pete's letter as being in accordance with the discussion at the time.

Now that Pete has raised the subject again, I feel that it will be necessary for us to face up to Pete with at least the facts of performance so far as par is concerned in order to finalize the matter one way or the other.

Would you have Mac or Ed Segan procure these figures and forward them to me or bring them to the office by the end of this week so that they will be handy during the first week of the market when undoubtedly Pete will ask questions concerning the finalizing of this matter.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/sm

[fol. 693E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 329

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois
June 15, 1956

Mr. E. H. Bergmann
Sealy Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

In reply to copy of letter which I received, dated June 9th and addressed to you by Peter Brown, with reference to the Lansing area in the state of Michigan, the statement that Pete has outlined is substantially the gist of the discussion we had when we talked about the four counties which we turned over to Detroit in February of last year.

We have not yet achieved par performance in Ingham County, in which Lansing lies. The par there is approximately $40,000 and our shipments there last year were slightly over $33,000. These figures are correct within just a few dollars and are not capable of being quite defined to the last dollar.

Because of business conditions and a change that we developed in sales policy in that area, I feel that we should hold this county until such time as we can see our ability or inability to achieve par. Further, while there is nothing definite in the offing, and I don't want it to be so considered,

we have not entirely discarded the idea of a Grand Rapids operation.

For that reason, I would like to withhold the conclusions here until such time as we have an opportunity to see our 1956 volume in the county, and also determine how our abilities turn towards serving this county well.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

cc: P. D. Brown

[fol. 694E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 330

Dict. 12/2/52
December 4, 1952.

Sealy Mattress Company
501 Santa Fe
Kansas City 6, Missouri

Attention: Mr. Isadore Gale

Dear Isadore:

I want to acknowledge receipt of your letter of November 24th and thank you for the thoughtfulness in inviting Mrs. Bergmann to come to Kansas City for the regional meeting. Inasmuch as this is a three week rat race, I felt that it was too much for her to attempt to follow me around the country and, accordingly, she is leaving the day after I leave Cleveland to drive to Jackson, Mississippi to visit with her son and grandchild.

The matter of the Memphis plant is supposed to be secret so far as Sealy is concerned. I know that the rumor has been out, but so far as Sealy is concerned we are not the ones to make the disclosure, if and when the deal is finally consumated. The deal as of today has not been closed. I feel that by the time I arrive in Kansas City that it will be finished business.

As to the possibility of getting some of the Missouri territory for the Kansas City plant, I'm afraid that is going to be out of the question because I have made a tremendous effort to try to get the little tip of Florida embracing just the Miami district for a separate plant, but the new people in Memphis would not hold still for it. I know that I never would be able to do anything with them in the way of slicing off some of the present Missouri territory that they have. I will know more about this when I see you in Kansas City next week.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 695E] IN UNITED STATES DISTRICT COURT,

GOVERNMENT'S EXHIBIT No. 331

Dict. 1/10/53
January 14, 1953

Mr. Edgar Haas, Sr.
Slumber Products Corporation
Memphis, Tennessee

Dear Edgar:

This is my first official letter to you as a member of Sealy and while it is not official so far as your entry into our group, I do want to tell you that I am happy to have you to be one of us.

I enjoyed our little lunch the other day and I hope that we will have the occasion of sitting down and breaking bread together frequently.

Even before you receive a signed contract from Sealy and actually begin operations as an active member, I am going to start to shoot at you for some of the territory that you have that some of our people covet.

Our plant in Louisville has been constantly after us for the territory that is in the Memphis contract that lies east of the Tennessee River. There are two or three counties there that they say are born Kentuckians and that they will only buy from people in Kentucky and they think they could do a much better job in those two or three counties than could ever be done from Memphis. Sometime when you have nothing else to do, you might look into those few counties and see whether or not they amount to very much so far as you are concerned and maybe if they don't, you might be willing to pass them on to Louisville.

Our plant in Kansas City, of course, is one of our outstanding plants and there is a little group of counties up in the northern part of Missouri that they would like to have because they think they can do a much better job there than what can possibly be done out of a warehouse in St. Louis. The counties are Adair, Scotland, Clark, Knox, Macon,

Randolph, Boone, and Cole. I guess the only one that amounts to anything is Cole because it does contain Jefferson City. Again, Edgar, I merely pass this on to you for reference in the future, and if sometime you have a chance to review these counties, again you might indicate to me whether you think you would consider a transfer for the benefit of the national picture.

[fol. 696E] May you continue to have the best of health and a most prosperous 1953.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 697E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 332

Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

January 19, 1953.

Attention: Mr. Morris Kaplan

Dear Morry:

This is written in acknowledgment of yours of January 14, relative to arrangements as before mutually decided upon between your plant and ours with the Kelly store group.

To confirm the arrangement, as I went over it with Mr. McGillivary in Chicago, it would provide as follows:

That your plant would serve the needs of the LaCrosse, Eau Claire and Chippewa Falls stores in your territory, as well as Monomonie and Winona stores, which latter two are in our territory. We make the concession to your plant of the latter two stores in view of the peculiar warehousing setup maintained by Kelly's in Winona. In addition, and until such a time when we ourselves may reach the point of doing so, your plant is likewise to be permitted to serve all of the Kelly stores, regardless of location, in their upholstered goods requirements.

It is our intention to work in the closest possible communion with your sales staff for the purpose of effecting the greatest degree of uniformity relative to bedding specifications, prices thereon, cooperative advertising policy, etc. It is our intention, at the earliest possible date, to organize a Road Show of our own for the purpose of serving those Kelly stores in our territory, in addition to many of our other dealers. Bernie intends contacting you further for the purpose of securing the use of your show as a dynamite-packed kickoff in this area with St. Paul's largest store, Cardozo's.

. . . . . .

[fol. 698E] With kindest personal regards, Sealy Mattress Company, Ross S. Rosenberg.

RSR:le

[fol. 699E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 333

January 14, 1953.

Mr. Ross Rosenberg
Sealy Mattress Company
Fisk & Rondo Streets
St. Paul 4, Minnesota

Dear Ross:

McGillivray advises that an agreement has been reached by you and him with reference to handling the Kelly Stores.

As I understand it, we are to serve the following Kelly Stores located in the cities as indicated:

LaCrosse, Wisconsin
Eau Claire, Wisconsin
Winona, Minnesota
Chippewa Falls, Wisconsin

This poses the problem of the sale of goods in Winona, Minnesota.

We will service the Kelly Stores in the three Wisconsin cities in our territory plus the Winona, Minnesota Store. When we are in Winona, we will sell only the Kelly Store in that city and not any other stores.

Since it is the practice of the Kelly Store in Winona to warehouse for the LaCrosse Store and the Winona Store, for that reason it is necessary that we ship into Winona for those two points.

St. Paul agrees to aggressively service the balance of the chain of Kelly Stores lying in Minnesota and North Dakota.

St. Paul also agrees to make delivery and sell the same goods, at the same prices, recommended to Kelly by Chicago, and Chicago in turn agrees to do likewise for any goods recommended to the Kelly Stores by the St. Paul factory.

[fol. 700E] Since Mr. Joe Kelly indicated that he would

work directly with you on promotional goods for the Minnesota and North Dakota stores, we would want to be able to work likewise with the stores in Wisconsin and Winona, Minnesota.

We understand that you have agreed to a 5% cooperative advertising program with Kelly Stores, based upon their matching the 5% at their lowest annual rate, after giving effect to all discounts. We have no such cooperative program but will go along with Kelly's on that basis for the stores in our territory so that we offer a co-ordinated story to Kelly's.

I understand that the boys have already sold against this advertising cooperative program, including some low end merchandise. I would suggest that merchandise sold below the normal standard mark-up goods to us be excluded for advertising cooperative programs. I see no point in giving them any cooperation on low mark-up promotions and roll edge type goods. We will try to have that finalized and confirm what items cooperation is to be extended on, if this can be changed yet during this market.

We also understand you have agreed to develop the Sally Jones Road Show for them in their territory on the same basis we extended it to Kelly's, where there is a sharing of cost on the part of the factory and the dealer. I am sure you have the details from us. We will do likewise in the Kelly Stores that we have not yet had our Road Show appear.

As in the past, we will service the Kelly Stores on sofa sleepers in all territories that they now use this type of equipment. As soon as you equip yourselves to manufacture sofa sleepers, we, of course, will withdraw to serve only the three Wisconsin and Winona, Minnesota Stores.

I would appreciate your confirming the above, with copy to Earl and Roger, so that these are indicated for the records, and that they make sure we pay royalties for goods being sold out of our territory.

McGillivray will furnish your representative, Mr. Cooperman, before he leaves the market, with the covers, specifications and other details necessary for you to bill the goods sold to Kelly's during the market.

[fol. 701E] If you need any of this merchandise to get

started, we will be very happy to furnish you with initial yardages, etc.

Your reply, by return mail if convenient, would be much appreciated so that we can go forward with Kelly's.

Best regards.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: E. H. Bergmann, J. R. Lawrence, C. B. McGillivray.

[fol. 702E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 334

January 27, 1953.

Mr. H. L. Forbes
Sealy Mattress Company
1115 Franklin Street
Louisville 6, Kentucky

Dear Harry:

I have a letter from Jack Metcalfe telling me that he has made a trade in territories with you. As I understand, he is trading you the county of Clay in Kentucky for which in return you are trading the counties of Magoffin and Johnson.

Such a trade is okay with us, but since both Magoffin and Johnson counties appear in your contract, we will wish to have an official release signed by you, and we, in turn, will give you the assignment of the county of Clay. Please have your letter signed by Mr. Logan or some official of your company.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:hlt

[fol. 703E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 335

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Louisville 6, Kentucky
Telephone Wabash 0566
1115 Franklin Street

January 28, 1953.

Mr. J. R. Lawrence, Vice President
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

Jack Metcalfe and myself have worked up a trade between us that will increase volume at the Logan Co., increase volume for Sealy, Inc., and we believe will increase for Jack Metcalfe.

Jack has agreed to give us Clay County, Kentucky. Please so mark your records.

In return for Jack giving Clay County to us, please also mark your records that we are transferring to him Magoffin County and Johnson County. These three counties are all in the state of Kentucky.

Please let us have official notice of the change so that we may mark our records.

Very cordially yours, Harry L. Forbes, Sales Manager.

HLF:mh

[fol. 704E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 336

SEALY OF THE CAROLINAS

"Sleeping on a Sealy is like Sleeping on a Cloud"

Lexington, N. C.
Telephone 572

June 26, 1953.

Sealy Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Attn: Mr. J. R. Lawrence

Dear Roger:

We are thinking seriously of changing our representation in the state of Georgia. We have never gotten much from that state but there is a possibility that we can do more if we have the Sealy line. We have a good prospect living in Athens, Georgia.

You told me some time ago that we could sell in the state of Georgia until such time as we were told not to do so. Does this situation still apply? Furthermore, would you have any general idea as to when a new factory serving the state of Georgia will be established. In other words we should be able to tell our representative that he will probably be able to handle the Sealy line either indefinitely or for a certain time.

I would be glad to hear from you as quickly as possible on this matter.

With kind personal regards,

Yours very truly, Sealy of the Carolinas, Inc., J. V. Moffitt, Jr.

jvm:jr/bm

[fol. 705E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 337

June 29, 1953.

Mr. J. V. Moffitt, Jr.
Sealy of the Carolinas
Lexington, North Carolina

Dear Joe:

If the developments take place that were discussed here in Chicago last week, the state of Georgia will be under the Memphis contract and will be handled from the Memphis sales office.

The developments regarding the state of Georgia are far enough along for me to tell you definitely that you will have to discontinue selling in the state of Georgia for one of two alternatives will take place. Either the Memphis plant will handle Georgia immediately or we will secure a plant in Georgia within the near future.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:hlt

[fol. 706E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 338

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Des Moines 8, Iowa
Telephone 3-5165
301-325 Southwest 8th Street

Mr. E. H. Bergmann
Sealy, Inc.
2512 West 25th Street
Cleveland, Ohio

July 9, 1953.

Dear Earl:

I have your letter of June 30th, together with the letter from Central Mattress Company of June 26th.

I am quite provoked at Mr. Shapiro, for his persistency and tactics in this matter, and my letter, a copy of which I am enclosing, is self-explanatory.

You state in your letter that you do not seem to be able to get rid of him, and it is my opinion that the reason is, because you have not, perhaps, told him definitely that the territory is not open to him, and I would appreciate it very much if you would do that, in plain simple language, so that he will understand it.

In answering your question, about selling the territory, the answer is definitely, "NO". We are not interested in selling the Nebraska territory, or any other part of our Sealy territory.

Of course, he would like to have a franchise with Sealy. He is sitting out there, selling nothing but cheap merchandise, and consequently, wants to pull himself out of the hole, but I do not feel that that is my responsibility.

I sincerely hope that this will be the last time that we will have to discuss this particular matter, however, I do feel that it would be a very good idea, and in all fairness to us, that you should write him a letter, stating very clearly the situation, and I would appreciate very much, having a copy to complete our files.

Sincerely yours, H. B. Fouts, President.

HBF:nw

[fol. 707E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 338-A

July 8, 1953.

Mr. Jules Shapiro
Central Mattress Company
Thirteenth & Cass Streets
Omaha 2, Nebraska

Dear Mr. Shapiro:

Mr. Bergmann of Sealy, Inc., has been kind enough to forward to me, your letter addressed to him, dated June 26th. This letter is with further reference to your desire to acquire the Sealy territory in Nebraska.

I wish to compliment you for being able to recognize the value of a Sealy franchise, and I cannot, necessarily, blame you for trying to secure a Sealy franchise for your own use. However, I cannot say that I admire your tactics in trying to secure the franchise. You, undoubtedly, remember that you visited me in my office, at which time, we discussed the situation very thoroughly, and very carefully, and that I told you, in no uncertain terms, that the Sealy territory, in Nebraska, belongs to us, here in Des Moines, that we need the territory, and that we have no intention, whatsoever, now or later, of relinquishing it to you or anyone else.

I am sorry that you do not feel that we are doing a good job in the Nebraska territory. However, I do not believe you are in position to be a judge in that matter, because we have our own figures to refer to, and while we are not doing as much as we would like, nor nearly as much as we intend to do, in the near future, nevertheless, our business in Nebraska has been quite satisfactory to us recently.

It is not a pleasure to me to write to a friend in this tone, however, I hope that it will not be necessary for me to again tell you that the Sealy territory in Nebraska is

not available to you or anyone else, and that should be final.

You are welcome, at all times, to visit us here, and most certainly are welcome to come in to the Sealy space in Chicago, but I will thank you, if you will not bring up the Nebraska territory when you do, because there is no point in discussing a situation that cannot, possibly, develop for you.

With kindest regards and best wishes, I am

Sincerely yours, H. B. Fouts, President.

HBF:nw

[fol. 708E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 339

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

354 South Parkway West
P. O. Box 2847
Memphis, Tennessee

Apalachicola July 13, 1953.
Sealy Incorporated
666 Lake Shore Drive
Chicago, Illinois

Attention: Mr. E. H. Bergmann

Dear Earl:

Thank you for your very nice letter of July 9.

We wish to relinquish the State of Florida with the exception of the western portion of the state which is bound on the east by Jefferson County.

In giving up this section of Florida we are to have the State of Georgia on our original contract plus the following in Florida:

Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Jackson, Bay, Calhoun, Gulf, Franklin, Liberty, Gadsden, and Waukula.

• • • • • • •

In line with your letter this territory is to be made a part of our permanent contract. Please acknowledge these changes to us.

Trust that you and Mrs. Bergmann had a wonderful vacation and received a lot of pleasure from your fishing trip.

Sincerely yours, Edgar C. Haas, President, Slumber Products Corporation.

ECH/e

[fol. 709E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 342

September 16, 1953.

Mr. Edgar Haas
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Edgar:

We are attaching hereto an original and four copies of an agreement between your corporation and Sealy, Incorporated covering the release of the State of Florida with the exception of the counties enumerated and the incorporation of the State of Georgia in your contract.

I do not have the date of your original contract as it is in our safety deposit vault. It may be that you have a copy in your office and can fill in the proper date. It is not too important as we can fill it in when I can get down to the vault.

We do ask that you execute all five (5) copies and return them promptly to this office so that Mr. Bergmann may execute them for Sealy, Incorporated. Upon completion we will return two (2) copies for your files.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:hlt

Enc.

[fol. 710E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 343

"Sleeping on a Sealy is like Sleeping on a Cloud"

SEALY COMPANY OF THE SOUTHEAST
P. O. Box 2847—354 S Parkway West
Memphis 2, Tennessee

September 29, 1953.

Mr. J. R. Lawrence
Sealy Incorporated
666 North Lake Shore Drive
Chicago, Illinois

Dear Roger:

We are enclosing herewith the original and four copies of the amended contract relating to the change in territory in the states of Florida and Georgia.

These agreements have all been properly executed by the President and Secretary of this company and after Mr. Bergmann has executed them, kindly return two copies for our files.

Kindest regards.

Cordially yours, Robert B. Conover, Treasurer, Slumber Products Corporation.

RBC:pk

Encls.-5

[Not read but offered and received.]

[fol. 711E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 344

October 13, 1953.

Mr. Robert B. Conover
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mr. Conover:

Please be advised that we are enclosing herewith two (2) copies of the amended contract relating to the change in territory covering the States of Florida and Georgia.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

Enc.

[Offered and received—not read.]

[fol. 712E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 345

July 23, 1953.
Dict. 7/22/53.

Mr. J. R. Lawrence

Dear Roger:

I have your memo relative to Sesquehanna County in Pennsylvania and for the life of me I do not know how it happened that Ted Englehardt and I did not discuss this particular county. It may be that he did not know that it was open or, possibly, I had it in my mind that it already belonged to Rochester.

It seems to me that inasmuch as he wants to have Wayne County, and if he services the county he must go up to the New York line, that he might just as well have Sesquehanna also. It would be my suggestion that we put it in his contract. From what I can tell there is not very much in the county and I doubt whether Rochester would do much with it because it is quite a ways from their plant. Actually, it is nearer to Paterson than anybody else.

Regards, E. H. Bergmann.

EHB:hlt

[fol. 713E] IN UNITED STATES DISTRICT COURT

July 10, 1953.

To: Mr. E. H. Bergmann

Dear Earl:

I have your note of July 7th regarding the additional counties to be placed in the Reading contract. Also, your note about the county of Cameron in the Pittsburgh contract.

This takes care of all the open counties in Pennsylvania with the exception of Susquehanna. I believe it was your intention to have all the open counties covered by some plant, and I will appreciate it if you will let me know in whose area you would want Susequehanna. As I see the map, you have two possibilities, one the Rochester plant and the other the Reading plant.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:hlt

[fol. 714E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBT No. 346

October 9, 1953.

Mr. Marcus Haas
Sealy Mattress Company
P. O. Box 2847
Memphis, Tennessee

Dear Marcus:

I had a long distance telephone call yesterday from Mr. Arthur Newhouse, who is the Merchandising Manager of the Avery-Comstock stores, located in Canton, Illinois, Lincoln, Illinois, Pittsfield, Illinois and Hannibal, Missouri.

Your salesman, Mr. Ahern, was in his store in Lincoln, Illinois at the time of the phone call. Apparently, this was the first call Mr. Ahern has made to the store, since the June Market, because we have been delivering goods to the Lincoln, Illinois store (which actually does lie in the Memphis territory of Sealy) for quite some months.

It was my understanding, in discussing this problem with you at the June Market, that we agreed we would continue to deliver Sealy merchandise to the Lincoln, Illinois store on a temporary basis; but we most certainly would not deliver to Pittsfield, Illinois and Hannibal, Missouri.

Here again, we find ourselves in the same old position of an inter-plant handling which cannot be fathomed. As your salesman, Mr. Ahern, kicked up quite a fuss and pointed out to the customer he could get better service from the St. Louis warehouse and better prices from Sealy of Memphis, naturally the customer is in a state of confusion.

We successfully promoted the Golden Sleep with the Canton and Lincoln stores by shipping a pool trailerload from Chicago to the two stores; and we have recently shipped a Nylon Promotional Mattress to the two stores

on the same basis, in addition to the regular merchandise.

As, apparently, there must be some misunderstanding about the agreement we made at the June Market regarding the Lincoln store, we have accepted cancellation of all orders on file and have told Mr. Newhouse to buy mer- [fol. 715E] chandise from Mr. Ahern of Memphis, as the store lies in the Memphis territory.

May I restate the desire of the customer and the basic problem involved, as follows: Mr. Avery, who owns the four stores, has an office in Peoria, Illinois. Mr. Newhouse is the Merchandising Manager and came to me at the last Market, after being solicited by our Mr. Mandelbaum and signified his desire and eagerness to buy Sealy and promote Sealy for his four stores as a unit.

It is apparent that under the existing Sealy setup, this is simply a dream. Of course, it is not understandable to the dealer and the only ultimate loser is Sealy.

I would very much appreciate hearing from you on this matter to see if there is anything further we can do to help the customer.

"Sin-Sealy" yours, C. B. McGillivray, Sales Manager, Sealy Mattress Company.

CMBcG:H

cc: M. Kaplan, E. H. Bergmann, I. W. Mandelbaum.

[fol. 716E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 347

Dict. 1/21/54.
January 25, 1954.

Mr. Sidney Sutherland
Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Dear Sidney:

This confirms our very pleasant conversation relative to the possibility of the transfer from your contract in the Baltimore contract the counties of Accomac and Northampton, which lie in Virginia but across the bay from Virginia proper.

Will you please write to Joe and indicate to him your ideas relative to these counties.

If you and Joe can come to some understanding relative to their transfer please advise me and we will reduce the understanding to writing and have it attached to the two contracts.

Yours very truly, Sealy Incorporated, E. H. Bergmann.

EHB:hlc

cc: Joseph Rudick

[fol. 717E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 348

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Richmond 20, Virginia
Telephone 52845
8 South Harvie Street

January 27, 1954

Mr. E. H. Bergmann
Sealy, Incorporated
2012 W. 25th Street
Cleveland, Ohio

Dear Earl:

Replying to your communication of January 25, 1954 in reference to our conversation concerning the counties of Accomac and Northampton in Eastern Shore Virginia, beg to advise that I have written to Joe Rudick in Baltimore as per copy of letter herewith enclosed. As stated to you in person these two counties are hard for us to work and I believe that Joe can do a better job there than Richmond.

You will note my remarks in Joe's letter concerning anything in Northern Virginia that he is not working. We work this part of the state very religiously and if he has anything in this area that is not being worked and wants to turn it over to me we will be happy to have it. However I want you and Joe Rudick both to know that I am not requesting any territory from him for the surrendering of the two Eastern Shore Counties.

In reference to our other conversations at High Point, beg to advise that I am working religiously toward reducing the indebtedness to Sealy both in the Royalty and Television. I contacted Jerry Joss and he has arranged

to cancel out two of the programs in Norfolk and one in Richmond. This will help the situation to some extent. However, since returning from High Point I have forward on to Chicago a check covering one of the Television programs and one of the back Royalties. I hope to work out this situation in the very near future.

With kindest regards and best wishes, we remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

enc.

[fol. 718E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 349

January 27, 1954.

Mr. Joseph Rudick
Sealy Mattress Company
2307 Hollins Street
Baltimore, Maryland

Dear Joe:

When I was in High Point at the recent Sales Meeting Earl Bergmann talked to me in reference as to whether or not I was working the two counties in Eastern Shore (Va.) namely: Accomac & Northampton.

I told him that my man was going there occasionally but that we were not getting too much business out of Eastern Shore and it was very inconvenient for us to work and he and I both reached the conclusion that it was a little more logical for your Baltimore man who works Southern Maryland all the time to come on down and work these two counties in Virginia. And, I assured Earl that it would be entirely satisfactory to me for you to take over these two counties and consider them in the Baltimore territory. In consideration for surrendering these two counties to Baltimore I am not asking for any additional territory from you but I might add that if you have any area in Northern Virginia either in the Valley or otherwise that you are not working and might want to turn over to Richmond I would be very pleased to hear from you. I am taking the liberty of sending a copy of this letter to Earl.

I hope that business is going along nicely with you and wish for you the best of luck.

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

cc: Mr. E. H. Bergmann.

[fol. 719E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 350

January 27, 1953.

Mr. Sidney Sutherland
c/o Sealy Mattress Company
8 South Harvie Street
Richmond 20, Virginia

Dear Sidney:

I am in receipt of a letter written to you by Earl Bergmann as regards the two (2) counties on the eastern shore which lie in Virginia, namely, Accomac and Northampton counties. According to Earl's letter you are to write me as regards your ideas relative to these counties.

For your information, Sidney, all you have to let me know is whether we can have those counties or not, as you will recall, the last time we spoke of some, you were willing to have me take them over as your man did not cover same thoroughly. For your information, we now have a man spending full time down the eastern shore of Delaware and Maryland, and, therefore, could very easily call on these accounts and service same. We feel that we can do whatever job is possible to be done in these two counties, and am, therefore, waiting to hear from you on same.

Thank you very much for your kind cooperation, and with kindest regards.

Yours very truly, Sealy Mattress Company, Joseph Rudick.

jr:rs

CC: Earl H. Bergmann.

[fol. 720E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 355

Mr. Irving Fisher
c/o Sealy Mattress Company
316 Price Street
Chester, Pennsylvania

January 28, 1954.

Dear Irv:

I am writing you at this time as regards a matter that I meant to discuss with you in New York but did not get the chance.

I have been after Earl Bergmann to give me Adams County in Pennsylvania, which belongs to the Reading, Pa. plant and was sort of half promised this county last year, but when Ted Englehart was taken sick could do nothing. I followed same up with Earl in December, and Earl advised that he would take same up with Ted Englehart, Jr. The follow up that I got on same was that Ted Englehart, Jr. would give up Adams county in Pennsylvania to us if you would turn over some territory that they are covering for you that you do not want to cover as I understand it, and do not know what this territory is myself, but if you would turn this territory over to them completely, they told Earl that they would give Adams County to us.

I am not asking you to do this as a personal favor to me, but if you do want to let them have this particular territory that they are covering now, they in turn will give us the extra county in Pennsylvania that we desire.

So, understand, am only asking you what your plans are, and if they are to give up this territory to Ready, then I would appreciate knowing same because I then feel that I can get them to give me this one county in Pennsylvania. I am sending a copy of this letter to Earl Bergmann and hope that you take this in the tone that it is meant. With kindest personal regards.

Yours very truly, Sealy Mattress Company, Joseph Rudick.

jr:rs

CC: Earl H. Bergmann.

[fol. 721E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 356

February 22, 1954.

Mr. Joseph Rudick
Sealy Mattress Company
2307 Hollins Street
Baltimore 23, Maryland

Dear Joe:

In response to your letter of January 28th with reference to the possibility of working out a solution for Adams County in Pennsylvania, I am sorry to say that we have not as yet been able to get together with Ted Englehardt, Jr. on a solution to our own problem here.

However, I have just written Ted trying to set a date up for this purpose and just as soon as we can come to some agreement you will hear from us further.

Kindest regards.

Very truly yours, Sealy Mattress Company of Phila., Irving L. Fisher, President.

ILF:id

cc: Mr. Earl H. Bergmann, Mr. J. Roger Lawrence.

[fol. 722E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 357

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Md.—Gilmor 5-7010

Mr. Earl H. Bergmann
Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

June 4, 1954.

Dear Earl:

I am going through a series of notes on my desk prior to getting set for the coming Chicago market. I notice correspondence on my desk dating back two years as regards our getting Adams County in Pennsylvania to be added to our territory.

I have not mentioned this to you in quite some time as I have been waiting for you to work out something with the Reading plant. As you know, Earl, we gave up two very good counties in Virginia to the Richmond plant, on the basis that we would get three counties in Pennsylvania. We did receive two counties in Pennsylvania, namely Fulton and Franklin, that between you and I are of very little use. There are only five dealers in both counties put together. We worked on the presumption that we would receive Adams county, which is a fairly well populated county with a number of good furniture stores.

I am calling this to your attention prior to the June meeting, hoping that you can and will do something for us during this month as regards Adams County.

Thank you very much for your consideration, with kindest personal regards.

Yours very truly, Sealy Mattress Company, J. R. Rudick.

jrr:rs.

[fol. 723E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 358

June 10, 1954.

Mr. J. R. Rudick
Sealy Mattress Co.
2307 Hollins St.
Baltimore, Md.

Dear Joe:

This letter also refers to letter of June 4th, this one governing the matter of Adams County in Pennsylvania.

Joe, I do not feel that I am in a position to push any further the matter of one man giving up territory to another.

That is one of the most disagreeable and hardest tasks that is asked of me to constantly nudge somebody else about giving up territory which is included in his contract. It is pretty much like a kid with three lollipops, in spite of the fact that he has got two in his mouth, and does not have room for the third, he still will not give it up.

Sometimes ago, I saw a letter pass across my desk wherein a suggestion was made that Ted Englehardt, Jr., would be willing to give up Adams County to you provided that Irv Fisher gave up some territory that he is servicing more or less on a temporary basis in his territory, and which Ted feels by rights can be better serviced by Reading.

It is my suggestion that you, Irv and Ted get together and try to work out the matter between you.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 724E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 359

June 15, 1954.

Mr. Irving L. Fisher
Sealy Mattress Company
316 Price Street
Chester, Pennsylvania

Dear Irv:

It has been quite sometime since we have spoken about the following, but I want to remind you of same before the Chicago meetings.

You and I in the past had discussed some sort of deal that you were trying to work out with Ted Engelhardt, namely, to take over some territory that he was working on a borrowed basis. We mentioned that if you took over that territory, it might be possible that I could get Ted Engelhardt to give up Adams County in Pennsylvania to me.

If you recall, this county in Pennsylvania was originally promised to me, but same never went through because of Ted Englehardt, Sr.'s illness. I wonder if you could bring me up to date on what has been done with Reading so that I may follow same up at the Chicago meetings. I am just in receipt of a letter from Earl Bergmann, where I had mentioned my getting this particular county, and he washes his hands of the entire thing, unless something can be worked out between the three of us.

If you will bring this information along with you to the Chicago meetings, I will consider it a great personal favor.

Yours very truly, Sealy Mattress Company, J. R. Rudick.

jr:rs

CC: Earl H. Bergmann, Sealy, Incorporated, 666 N. Lake Shore Drive, Chicago, Illinois.

[fol. 725E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 360

July 14, 1954.

Mr. Irving L. Fisher
Sealy Mattress Co.
316 Price Street
Chester, Pa.

Dear Irving:

During the exact time that I was discussing with Mr. Englehardt, Sr. the matter of the small triangular piece of territory that you were discussing with Mr. Engelhardt at a previous time to be given to the Reading plant in lieu of permission for shipment by you to the various stores of the Stern group, you called relative to the same matter.

I know that Ted made an appointment with you to discuss this matter and when I left him, so far as I know, he was in the mood to execute the agreement with you.

Will you please advise me as to what transpired in your conversation with him after I left.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 726E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 361

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

316 Price Street
Chester 5-1865
Chester, Pennsylvania

July 22, 1954.

Mr. Earl Bergmann
Sealy, Incorporated
2012 W. 25th Street
Cleveland, Ohio

Dear Earl:

This is in response to your letter of July 14th with reference to the final arrangements made with Ted Engelhardt regarding the small segment of territory in Montgomery County, Pennsylvania on a direct line between Pottstown and Souderton.

Ted has promised to finalize this for you by submitting a letter indicating our agreement together with a map showing the defined area involved.

Generally, we have agreed to turn this territory over to Ted Engelhardt in return for which Ted has agreed to permit us to sell Stern's and Liebman's, two chains whose offices originate in Philadelphia.

The agreement involves no commissions or anything of that kind but that the total sales of goods shipped in to Ted's area for these accounts would then be applied as part of his sales quota. For example, if $20,000 worth of goods were shipped into his territory, this would be added to his sales figures rather than to ours.

I think this is the main basis for agreement plus the fact that we have pledged to Ted that we would do everything possible, in the event that we sell either of these chains, to keep him fully informed as to any advertising programs they would have in those stores in his area which might in any wise embarrass Ted. We would attempt to alert him to those ads so that he, in turn, could be sure not to run anything in conflict with them or advise me if we were doing anything which would conflict with his setups in the towns which we would service.

I am glad to see this matter will now finally be resolved.

Very truly yours, Sealy Mattress Company of Phila., Irving L. Fisher, President.

ILF:id

CC: Mr. T. C. Engelhardt.

[fol. 727E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 364

Mr. Louis Haas
Sealy Mattress Company
3681 Conway
Ft. Worth, Texas

October 4, 1954.

Dear Louis:

Please refer to your letter of August the 3rd in regard to a proper division of the Texas territory by county lines between you and Brenham. I have taken up this matter with Mr. R. S. Rogers of the Brenham plant, and he tells me that it is agreeable with him except for two counties which are listed in his area and which he thinks belong in yours. One is the county of Brewster and one is a county named Presidio.

Bob tells me that he has given permission to have your man call on the larger town in Brewster County inasmuch as your salesman has some personal acquaintance there. He feels that inasmuch as you are servicing that county you should have it in your area. Since the salesman from your area to get to Brewster County would have to travel through Presidio County he feels that also should be assigned to you.

In other words your franchise would include the following counties: Jeff Davis, Pecos, Kimble, McCulloch, Mills, Bell, Freestone, Cherokee, Shelby, Brewster and Presidio. The Brenham plant would have Terrell, Val Verde, Edwards, Masou, San Saba, Lampasas, Falls, Limestone, Anderson, Milam, Nacogdoches, and San Augustine.

The net effect of these changes would be to raise the potential of the Brenham territory to 2.4843 and reduce the potential of the Ft. Worth territory to 4.031.

If you find yourself in agreement of the above handling please let us know and we will have the necessary papers drawn up so that the final handling of this borderline territory can be recorded.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/js

cc: Sealy Mattress Co., Brenham, Texas.

[fol. 728E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 366

October 19, 1954.

Mr. R. S. Rogers
Sealy Mattress Company
P.O. Box 593
Brenham, Texas

Dear Bob:

I have checked with Louis Haas the possibility of dividing the Texas territory by counties. Louis tells me that everything is agreeable except that he does not want Brewster and Presidio counties. He states that he did have an agreement for a period of one year in connection with those two counties, but that the agreement has expired and they are no longer working those counties.

Inasmuch as these two counties are primarily in your original territory I think that they should be assigned to your Brenham territory. If this is agreeable let me know and we will proceed with winding up this division of territory by counties.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/js

cc: Sealy Mattress Co., Ft. Worth, Texas.

[fol. 729E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 367

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

Post Office Box 593
Phone 3676 & 3677
Brenham, Texas

October 21, 1954.

Mr. Roger Lawrence
c/o Sealy, Incorporated
666 N. Lake Shore Drive
Chicago 11, Illinois

Dear Roger:

We have your letter of 10/19/54 regarding possibility of listing the Texas territory by counties.

This is to advise that we do not wish to have any changes made in our territory boundary lines. We have a contract stating our exact territory.

We cannot see where such changes as have been proposed will result in any benefit to us, and we therefore see no reason why we should agree to any change.

I will be glad to discuss the above with you when I see you in November.

Yours very truly, Sealy Mattress Company, By R. S. Rogers.

RSR/aew

[fol. 730E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 372

April 18, 1955.

Mr. Ernest M. Wuliger
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Dear Ernest:

We have been asked by the Louisville plant to seek from you release of the cities of Covington and Newport.

The Louisville plant points out that they are charged with the balance of the two counties in which these two cities lie and they feel that without the two cities the counties offer very little opportunity for them to attempt to sell merchandise in that portion of the county which they have.

Would you be good enough to check as to how important these two cities are to you so far as your establishment of outlets and if they represent little value to you this office would appreciate having you waive these two cities to the Louisville plant so that we could assign the entire county to them.

Will you please drop me a line and advise me as to your feelings in regard to this request.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ef

[fol. 731E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT NO. 373

April 28, 1955.

Mr. Ernest M. Wuliger
Sealy Mattress Company
2841 E. 37th Street
Cleveland 15, Ohio

Dear Ernest:

This is in reply to your letter of April 25th relative to the cities of Covington and Newport, Kentucky. This request was something like the boy who stopped the girls on the corner and asked them for a kiss. You never can tell until you ask!

Frankly I did not expect you to give up the cities because that would be contrary to the usual reply to a request for the waiving of territory. It seems only fair to me, Ernest, that if you feel you want to keep these two towns, inasmuch as the balance of the county has very little left in it in the way of territory that could be serviced, it would only be fair to the Louisville plant that the buying potential of the two counties be put over on Cincinnati, and Louisville be relieved of this percentage so far as determining their pars and performance is concerned. It may not amount to a mole hill but I think it would serve a little in the way of a mental easement. What is your answer?

Very truly yours, Sealy, Incorporated, E. H. Bergman.

EHB:jk

[fol. 732E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 374

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

Fisk and Rondo Streets
Phones ELkhurst 8181 MIdway 1940
Saint Paul 4, Minnesota

Our new address La Salle & Myrtle

Mr. Earl H. Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

September 16, 1955.

Dear Earl:

Immediate reply is being made to the receipt of your letter of September 15th, which accompanied the Seidman & Seidman audit of our royalty account, and, needless to say, I certainly share your pleasure in the audit having turned up inadvertent discrepancies of a very insignificant amount. Actually, as was also pointed out to Mr. Adelman when he was here, in the interest of having our sales become commensurate with our par, we have been including and paying royalty on some $25,000 annual sales to a legitimate jobber, for which, to date at least, we have been asking no credit. This bridge we can cross when our sales begin to exceed the $1,000,000 goal.

It is, however, with reference to the matter raised in your second paragraph that I particularly want to comment about:

(1) In the first place, Earl, we were very surprised on learning that the town of Lemmon, South Dakota, was outside our franchise area. It would help matters if you would refer to a map of North and South Dakota as I proceed with this explanation. We certainly would not have deliberately begun servicing this account had we known this, and without first securing permission to do so. It is true that had our map been carefully gone over,

that the fact as pointed out would have been ascertained; nobody here, however, bothered to do it. So certain were we that Lemmon was within our territory, that we have this store under a 3 year Sealy highway sign contract.

(2) From a practical standpoint, if we do not serve this community, no other Sealy plant will. If you will note, Lemmon is situated on the North Dakota-South Dakota state line, about 12 miles west of the edge of our franchise territory. It is situated on highway 12, along which route our representative travels in order to make such towns as Bowman, Scranton and Hettinger, North Dakota, and McIntosh and Mobridge, South Dakota. The two [fol. 733E] stores in Lemmon are both served exclusively by Twin City manufacturers; nor has a Denver supplier ever sent his representative into that section. The foregoing is being given to you, Earl, not so much in justification, but rather as logical justification for the account being served as it is.

(3) As to the legitimacy of our serving this account, this I would be willing to entrust to you for adjudication and disposition. I feel certain that if the matter is taken up with Denver, considering all the facts as already pointed out herein, not to mention the stakes involved being as small as they are, and considering the practical aspects involved, that Bill Stein would readily go along with the situation as it exists and would make exception from their territory of this single community. Of one thing you may be sure, if this dealer cannot be shipped Sealy products from St. Paul, he will return to the fold of King Koil.

This is the only case to my knowledge of any shipments being made to a store outside of our authorized territory, and I will await with interest your disposition of the problem involved. With kindest regards.

Very truly yours, Sealy Mattress Company, Ross S. Rosenberg.

RSR-sn

[fol. 734E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 375

September 19, 1955.

Mr. Ross S. Rosenberg
Sealy Mattress Company
LaSalle & Myrtle Streets
St. Paul 4, Minnesota

Dear Ross:

On Saturday, September 17 I struggled with the change necessary to be made in the division of territory between Brenham and Ft. Worth. As a result I had the atlas, county map outline and the contract book before me in order to be sure all records were properly changed.

Your letter of the 16th relative to Lemmon, South Dakota came just in time. While I was at it I traced through the matter. It took me some little time to locate the town because the atlas did not show it. If it had not been for the fact you told me it was on Route 12 and we had a Rand McNally auto map for the United States, I do not believe I would ever have found it.

I can see what you contend when you say the chances are that Denver has never set foot within the town, it is almost a logical stop for your man who covers the territory within a few miles of the town and undoubtedly it would fall back into the hands of King Koil if you discontinued shipping Sealy products from St. Paul. I have a hunch that Denver does not even know where the town is located.

As I stated to you in my letter of the 15th the matter of shipment outside of the territory should not be made an issue by this office unless it was pressed by someone who felt he had been aggrieved, which of course, is not the case in this situation. Therefore, I have no intentions of raising the issue with Denver because I think in cases such as this it is always well to leave sleeping dogs lie,

but of necessity to admonish the fellow who some day might find himself in trouble, and the trouble could come about more or less innocently as apparently is the case here.

I think the thing to do is to let the matter ride along [fol. 735E] until the annual meeting when Bill Stein will be here and possibly some way in an offhand approach the matter can be brought up to Bill, and undoubtedly handled in a friendly personable way. I am quite sure, as you say, Bill Stein would readily go along with the situation as it now exists and would make an exception for this single community.

In the meantime let us let it ride status quo.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/lp

[fol. 736E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 376

September 22, 1955.

Mr. H. B. Fouts
Sealy Mattress Company
301-325 S.W. 8th Street
Des Moines 8, Iowa

Dear Harry:

Your letter of the 19th relative to the Davenport situation arrived just one day too late to intercept the letter dispatched to you yesterday, September 21st.

I recall your having told me you now were selling some accounts in Davenport and that today you would not be inclined to surrender as much territory as possibly you would have some months past. I did not gather from that that you would not be interested in waiving any territory whatsoever. Your letter of September 19th in which you state you would not care to relinquish any of the Davenport territory of course opposes any possibility of working out the franchise for the Davenport Bedding Company.

I am happy to note your statement that since you have rearranged your selling organization and have a separate selling force for Sealy products that you are definitely making progress in Davenport. Harry, this pleases me very much because a separate selling force was a suggestion I made to you and I was sure you would find it would improve your selling results.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

cc: M. A. Kaplan.

[fol. 737E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 377

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

301-325 Southwest 8th Street
Telephone 3-5165
Des Moines 8, Iowa

Mr. E. H. Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

September 23 1955.

Dear Earl:

I just received your letter of the 21st, with further reference to the Tri City Territory. Apparently, you had not received, and read, my letter on this subject prior to your dictation.

We must admit that it is certainly generous of Morry Kaplan to be willing to give up seven counties along the Mississippi River, in the interest of establishing a new plant. I do not know what prompts Morry to be willing to give up this territory, because I know that he does not feel the same way about some other territories that he has difficulty in servicing; but, regardless of the reason, I think it is very considerate of Morry to be willing to cooperate to that extent.

The situation concerning Des Moines is entirely different. We do not have a surplus of territory to support our plant. In fact, we hardly have enough, but, of course, as we continue to improve our position, our volume will, undoubtedly, increase; but it would be ridiculous for us to even consider giving up any part of our territory, especially the part which is mentioned. As my previous letter stated, there was a time when we were not too interested in the city of Davenport itself, but times have changed, we have completely reorganized our sales force, and we have spent considerable time and money in Daven-

port and the adjoining territory. As a result, our business has improved greatly. That being the case, we would not for one minute even consider giving up Davenport to anyone, let alone a new licensee.

I wonder if you have stopped to analyze, and try to determine just why the Davenport Bedding Company is suddenly interested in a Sealy franchise. If they are doing as well as we are told, they would have no need of Sealy, or any other group, franchise. Could it not be [fol. 738E] possible that their business is not as good as it was, due to competition? And, that they need a name to tie to, otherwise a plant certainly would not be interested in taking on a territory the size that which you suggest. In all the counties that Chicago is willing to give up, the total population is about 268,000. Scott County, in which Davenport is located, has a population of about 100,000, but even if we were to match the Chicago territory, it would not still be less than approximately 500,000 population, and that would certainly not support any plant. It would, of course, give that particular plant the advantage of the name, Sealy, which could help them sell their private brand merchandise in contiguous territories; and I believe we are having enough grief along that line now.

If such a thing were possible, that there was enough surplus territory to create a satisfactory one in that area, I should think Sealy, Inc. would want to give consideration to a pilot plant; but that small area would not be sufficient even for that kind of an operation, in my opinion.

I do not know just how you will accept my reply in this matter, you may feel that I am not as generous as Morry; and, perhaps, it is true, but nevertheless that is my considered opinion and I would appreciate it very much, Earl, if you would consider the matter closed as far as Des Moines is concerned.

With best wishes, I am

Yours very truly, Sealy Mattress Company, H. B. Fouts, President.

HBF:km

[fol. 739E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 378

October 3, 1955.

Mr. H. B. Fouts
Sealy Mattress Company
301-325 Southwest Eighth Street
Des Moines, Iowa

Dear Harry:

My letter of the 21st relative to the Tri-City territory missed yours by just one night. My letter went out one evening and your letter was on my desk the next morning.

There really is no need in answering your letter of the 23rd except that I do want to tell you that actually I have been trying to contact the Davenport Bedding Company in the right way for over six months. Actually we went to them, they did not seek a Sealy licenseeship.

When you have something to sell such as Sealy to a fellow of the reputation of the Davenport Bedding Company the success of your efforts, in my opinion, depends a great deal upon a correct approach and for that reason the contact could only be made at a certain time in a certain way by a certain person.

As you say, Harry, it is finished business.

I got a kick out of your longhand note regarding the steno and the errors.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

ehb:cj

[fol. 740E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 379

October 12, 1955.

Answered 10/19/55

Mr. J. L. Metcalfe
Sealy Mattress Company
P. O. Box 432
Bluefield, Virginia

Answered 10/14/55

Mr. Wm. A. Edie
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Gentlemen:

During the preparation of the new forms to cover the Comprehensive Sales Report we have come upon inconsistencies between the two above listed plants regarding certain counties.

Clay County, Kentucky is shown in both contracts. Will each plant advise us the correct status of this county.

We also note that Magoffin and Johnson Counties are not shown in either contract and we would appreciate having your advice as to which contract should carry them.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

[fol. 741E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 380

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

October 14, 1955.

Mr. E. H. Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

Bud Wahking, our representative for Kentucky, tells me that several years ago at one of the markets, Harry Forbes who was then Sales Manager and Jack Metcalfe, for one of his salesmen, agreed to swap counties along the border to conform with the calls which they were then making. It was his understanding that we were to get Clay County, Knox County and were to give up Magoffin and Johnson Counties and possibly one or two others. He does not know whether this was taken to Sealy, Inc. at that time or if a letter was written on it.

Perhaps Jack, having been present, will clear this up in his response to your letter. We have a good dealer at Manchester in Clay County and have never been informed of other dealers in that territory.

As soon as I get Jack's version, I will be glad to either write to him or you and do what we can to clarify the situation.

Yours truly, Sealy Mattress Co., William A. Edie,
Sales Manager.

cc: Mr. J. L. Metcalfe.

[fol. 742E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 381

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

October 21, 1955.

Mr. Earl Bergmann
Sealy, Inc.
666 N. Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

A letter which I received from Jack Metcalfe today concerning the trade between Louisville and Bluefield seems to confirm the information that I had been given when I came here. We note from his copy that Clay and Knox Counties were to become a part of Louisville territory and Johnson and Magoffin Counties become a part of the Bluefield territory.

We are in full agreement on this and this letter should be filed to that effect.

Yours truly, Sealy Mattress Co., William A. Edie, Sales Manager.

b

[fol. 743E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 382

October 11, 1956.

Mr. E. M. Wuliger
Sealy Mattress Company
2841 East 37th Street
Cleveland 15, Ohio

Dear Ernest:

This morning's mail brought forth a letter from Bernie Kegan advising me that he was withdrawing his application for procuring the Orlando franchise. I have a feeling this was the result of my statement that the purchase of the plant at the price paid by Sealy, Inc. would only be half of the requirement, and that at least an additional $50,000.00 in cash would have to be shown as available for immediate advertising and merchandising of Sealy.

Your interest in procuring this franchise is the only remaining one to be considered. Possibly before you leave on your European trip with your lucky dealers you may want to start preparing data which will be necessary for submission to the board when you make formal application for the franchise. The board will require two (2) things. First, a schedule of the stockholders and the proposed management and, second, which will be of even more importance, a financial statement of the funds which will be placed in this corporation to handle the Florida requirements.

The present contract held by the Sealy Mattress Company of Florida specifies the addition of a physical plant in the Miami area if the sales there are not sufficient to meet the potential. The Miami area is considered to be all counties south of and including Martin, Glades and Charlotte.

This writer would like to see you consider the Georgia

territory as a separate and distinct one at the same time you make formal application for the Florida territory. As I have pointed out to you previously, this Georgia territory will definitely require that a physical plant be located in Atlanta. Said plant must be of such size and scope as to be favorably compared with the very large and fine plants operated in Atlanta by Simmons and Southern Bed Spring Company.

[fol. 744E] Very truly yours, Sealy, Incorporated, E. H. Bergman.

EHB:jk

cc: Members of Executive Committee.

[fol. 745E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 383

May 11, 1956.

Mr. Louis J. Gross
Sealy Mattress Company
481-485 St. Paul Street
Rochester 5, New York

Dear Louis:

As you know I have just returned from the annual meeting of the Board of Directors for Sealy, Inc. During the review of the Booz, Allen and Hamilton report a discussion arose concerning the recommendations of the management consultants concerning the realinement of territories in order to obtain complete coverage. It was pointed out that many licensees are not exploiting all their territory, and an effort should be made to have them relinquish such territory that they are not utilizing to the fullest possible extent. A motion made by M. A. Kaplan and seconded by J. R. Rudick and unanimously approved was:

Resolved:

That the executive office immediately set up machinery to work with all licensees not presently achieving 80% of par in all major divisions of their territory in order to either (A. offer every assistance to such licensee to enable such licensee to bring about such better development,) or (B. obtain *voluntary relinquishment* of the undeveloped territory for realinement,) and (C. to make a semi-annual report to the Executive Committee of the Board disclosing the progress resulting from such efforts, and all legal steps be taken to continue and implement the program so as to bring about complete nationwide development).

In conjunction with this resolution by the Board, there was submitted by the writer a schedule of the 1955 Annual Sales Analysis for each territory, and in this connection the sales for the western section of your territory showed a deficiency of $216,241. In other words the territory embracing the city of Buffalo was only producing at the rate of about 40% of its expected sales.

[fol. 746E] It should be quite obvious to you in face of the extremely low rate of performance for the Buffalo section of your territory that some immediate action must be taken by you and your partner to eliminate the situation now existing there, or you will find that the Board of Directors will insist upon the surrender of that portion of your territory in order to make it possible to realine the territory and install a licensee who is in a position to put forth a more vigorous selling effort.

The writer is not familiar with the status of your sales representatives, but it is quite obvious that either you do not have the right type of salesmen representing the Buffalo territory or you do not have adequate salesmen stationed there. I believe I am not entirely incorrect when I say the time is rapidly approaching when you and Myron must make a decision regarding what you are going to do with the Buffalo section of your territory if you intend to retain it as a part of your Sealy licenses.

I would like to hear from you relative to this matter and ask that you give this problem some very serious thought because it affects you and your Sealy contract.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 747E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 384

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

May 23, 1956.

Mr. E. H. Bergmann, President
Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

Bill Edie tells me that in a recent telephone conversation you mentioned the possibility of some territorial adjustments. We would like to get our hat in the ring for a little more territory which we feel would work to the advantage of Sealy National as well as ourselves.

In Kentucky we feel that our logical western boundary should be Kentucky Lake. In other words, our western boundary to coincide with the western side of Livingston, Lyon, and Trigg Counties. We also believe that our southern Indiana territory should be strengthened by the addition of Vigo County (Terre Haute). If you will examine a map of these two states, I think you will agree.

The cream of Indiana is of course from Indianapolis north. The southern part (except for Evansville and Terre Haute) is very sparsely inhabited. We now have Evansville, but not Henderson which is just across the river from it. In our present Kentucky territory, we feel that a better job could be done, but there isn't enough potential to justify adding another salesman.

With the additions we are requesting, we would add

another salesman, and be able to do a more intensive selling job all around.

Our Bedding Div. salesmen, as you know, have also been trying to sell the products of our Light Metals Div., although this has not taken over 10% of their time. It was recently decided that Light Metals should employ separate salesmen. This change will be made as promtply as practical, giving us men who are 100% bedding (and dual-purpose) salesmen. About 90% of our overall bedding sales are Sealy.

[fol. 748E] We have steadily improved our production facilities both for mattresses and Con-Sealy units.

Your records indicate the progress we have made in the past year and a half, both from the standpoint of increase over previous sales, and in relation to our quota. We believe this progress merits the small additional territory we are asking.

Your comments will be appreciated.

Yours truly, Sealy Mattress Co., Carter, President.

E.C.Logah/b

[fol. 749E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 385

June 4, 1956.

Mr. E. C. Logan
Sealy Mattress Company
1115 Franklin Street
Louisville 6, Kentucky

Dear Carter:

It was nice to receive your letter of May 23 because I always enjoy hearing from you regardless of what the subject matter may be.

The conversation with Bill Edie relative to the possibility of some territorial adjustment was one of those off the cuff conversations relating to a subject of which this office is constantly aware, namely, the relinement of territories between contiguous plants for the over-all betterment of the national picture, the specific improvement of one plant, the avoidance of any harm or penalty to the plant being asked to cooperate with the national office in facing up to the realistic facts concerning sales performances.

Unfortunately, all territories are under contract which requires voluntary acquiescence to any suggestions of relinement. This writer over a period of years has found this to be a most difficult problem. It can be compared to the child who has three large lollypops the size of which is such that she cannot put more than one in her mouth and, therefore, the other two virtually are of no particular value to her, but you know how kids are, try and get them to give up anything that they have. The similarity might sound strange, but that is exactly the same position I find myself in when I ask any Sealy licensee to relinquish a little piece of territory regardless of how miserable a job they may be doing in it. We work constantly at the problem, and it is surprising how many little adjustments of a

county or two are made each year because of the gentle negotiations going on at all times to improve the national position with no particular harm to any one individual operating unit.

[fol. 750E] Right at the present moment I do not have anything I can offer as a possibility, but I will keep in mind your suggestion about the three counties mentioned as the western boundary in Kentucky. Likewise, we will keep in mind the suggestions relative to Henderson and Terre Haute. I hope sometime to be able to accomplish something which will be pleasing to you.

Any time you happen to be in Chicago please drop by and pay us a visit.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 760E] In United States District Court

Government's Exhibit No. 386

Sealy Southeast

"Sleeping on a Sealy is like Sleeping on a Cloud"

P. O. Box 2847
354 S Parkway West
Memphis 2, Tennessee

June 6, 1956.

Mr. E. H. Bergmann
Sealy, Inc.
666 North Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

Since we have advised you that we will give up the State of Georgia as of July 1, we do not wish to be represented at the High Point Market.

With best regards, we are

Sincerely yours, Edgar C. Haas, Sr., President, Sealy Southeast.

DBE/g

[fol. 761E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 387

June 12, 1956.

Mr. Edgar C. Haas, Sr.
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Edgar:

This letter acknowledges receipt of your letter of June 8 relative to your desire to assign back to Sealy, Inc. the state of Georgia as of July 1, 1956.

On behalf of the corporation may I thank you for the return of this territory which can be reassigned to some manufacturer located within the state, or to someone willing to locate within said state. This is undoubtedly a must for the successful carrying out of what you and I know to be a difficult problem.

Edgar, I would like to arrange to see you during the coming market. At that time we can leisurely discuss a number of problems relative to the overall Sealy picture as related to the Memphis operation. If you feel fit to the task, I would like to invite you to have dinner with me some evening. We can discuss problems relative to the amiable operation of Sealy in which we both have a mutual concern and possibly arrive at a solution. I would be happy to discuss this at any time which might be convenient to you.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 762E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 388

June 25, 1956.

Mr. Joseph F. Haas
First National Bank Building
Atlanta 3, Georgia

Dear Joe:

In reply to your letter of June 19th relative to Slumber Products Corporation, and the possible loss of royalties, please be advised that it is understood that the Memphis interests are to continue to ship merchandise into Georgia as before, paying royalties until such time as we definitely have the territory under contract either to an existing plant or one to be erected. I think this will cover the matter of any loss of a large portion of the royalties which have come from that point in the past.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/sm

[fol. 763E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 389

SEALY OF THE CAROLINAS

"Sleeping on a Sealy is like Sleeping on a Cloud"

Lexington, N. C.
Telephone 3572

August 27, 1956.

Mr. E. H. Bergmann
Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Dear Mr. Bergmann:

I doubt seriously that anything can ever be done about this matter. However, I pass it to you in the sincere belief that the action requested would be in the very best interests of Sealy, Incorporated.

We refer to the northeastern part of North Carolina, starting with Vance County, going through Warren, Halifax, Nash, Edgecombe, etc.

In the first place, our television coverage over Greenville, North Carolina, at which point we have our fullscale warehouse doing more than $200,000 business each year, covers not only our own Sealy territory, but a good part of the territory outside our franchise, immediately to the north. In fact, Pitt County, in which Greenville is located, is one of the northernmost counties in our franchise.

In the second place, our salesman, Mr. B. W. Haithcock, whom we are sure that you know, resides in Henderson, North Carolina, which itself is in Vance County. We sell a great deal of Peerless mattress Company merchandise in that county and otherwise in the Haithcock territory.

In the third place, our television coverage over Station WFMY-TV, Greensboro, North Carolina, two nights per week, helps the other licensees materially in view of the

fact that Guilford County is one of the northernmost counties in our territory. It is directly beneath Rockingham County.

[fol. 764E] We are concerned particularly with the counties in North Carolina which are served by the Richmond plant. I suppose that there will never be any chance of Lexington's being able to serve any or all of those North Carolina counties, but I say to you in all sincerity that Lexington can do a much better job in that territory than is presently being done. We say this in spite of the fact that our own television coverage principally over Greenville, North Carolina, and also over Greensboro, North Carolina, is contributing materially to the buildup of the Sealy name in that territory.

I do not want to be put in the position of asking for someone else's territory. However, it has occurred to me that this might simply be held in the back of your mind in case such action may become feasible at some time in the near future.

With kind personal regards,

Yours very truly, Sealy of the Carolinas, J. V. Moffitt, Jr.

[I think I would buy the franchise for those counties if that ever becomes feasible.]

JVMjr/eg

[fol. 765E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 390

August 29, 1956.

Mr. J. V. Moffitt, Jr.
Sealy Mattress Company
Lexington
North Carolina

Dear Joe:

This acknowledges receipt of your letter of August 27 relative to the North Carolina counties which are being serviced by the Richmond plant.

I agree with you that there is little that can be done at the present time, but inasmuch as there is the possibility of a complete change in Richmond management we may be able to work something out.

I will not forget your suggestion. I will drop a line to the Baltimore plant telling them that if they are successful in their efforts to take over the present Richmond operation that they give consideration to your request.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 766E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 391

August 29, 1956.

Mr. J. R. Rudick
Sealy Mattress Company
2307 Hollins Street
Baltimore 23, Maryland

Dear Joe:

This letter may not be necessary because it has to do with the possibility of your acquiring the Richmond license contract. As this letter is being dictated we do not know if you are going to be successful in acquiring the contract.

For sometime I have been after Sidney to divorce himself of a few counties in North Carolina which should go to the Lexington plant. As a matter of fact Sidney admits he does virtually no business there, and has not been servicing the counties. He maintains he does business strictly on an intra-state basis in order to get around the union situation.

If you do work out an arrangement whereby you will be taking over the Richmond operation, I would like to suggest that for the good of the cause you submit these counties to the corporation for re-assignment to the Lexington plant.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 767E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 392

SEALY OF THE CAROLINAS

"Sleeping on a Sealy is like Sleeping on a Cloud"

Telephone Chestnut 6-2357
Lexington, N. C.

November 23, 1956.

Mr. E. H. Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

Dear Mr. Bergman:

We may be premature in this suggestion and further the idea may be entirely out of line, but we have been thinking about this matter and have decided to write.

The Sealy Mattress Company of Richmond holds the following counties in North Carolina, their January 1, 1956 BPI being indicated alongside.

Vance County	0118
Warren	0058
Northampton	0072
Gates	0022
Pasquotank	0107
Currituck	0021
Perquimans	0028
Chowan	0041
Hertford	0061
Bertie	0072
Halifax	0190
Nash	0215
Edgecomb	0193
Martin	0046
Washington	0046
Camden	0016
Total	1336

The total January 1, 1956 BPI for North Carolina is 1.7385. The total for South Carolina is .8860. The total of the two is 2.6695. The Richmond territory in North Carolina, as above, is .1336. The Bluefield territory in North Carolina, which we will not list at this time, is .1559. Deducting the Richmond and Bluefield from North Carolina BPI and adding the total South Carolina BPI, we come to our own net BPI of 2.3800 for the territory.

[fol. 768E] Our sales par for 1956 is $902,392.00, this based on the BPI of 2.3800.

This assumes a sales par of $379,156.30 for every 1.000 of BPI.

On that basis, the Richmond PAR based on their .1336 of BPI, for the North Carolina territory, would be $50,655.28.

This sales par times the royalty of 2.5% would be $1,266.38. Our proposal is that we would pay Sealy Mattress Company of Baltimore $7,500.00 for their franchise in the North Carolina counties, which would amount to approximately 6 years royalty on their 1956 sales par for that particular territory.

We may be foolish in making this rather considerable offer. However, with our warehouse set-up in Greenville, N. C., which is right at the northern tip of our own North Carolina eastern territory, and with our television coverage out of the Greenville television station, we find that our salesman for the eastern Carolina division is somewhat handicapped by his territory, for Sealy purposes, being entirely south of the warehouse and television location.

We have noted recently in one of the newspapers that, under the reorganization of the Richmond plant, only upholstered furniture will be produced at that point, all mattresses being produced in Baltimore.

This is quite important in view of the fact that the territory about which we are talking, in eastern Carolina, is not upholstered furniture territory. You are not going to sell any sleepers in the territory which Sealy Mattress Company of Richmond holds in North Carolina.

By the same token it is going to be difficult to serve this territory out of Baltimore, Maryland with bedding production.

Finally, there is this one point. There are no real cities in this Richmond territory in North Carolina. Joe Ruddick is a city boy. I have an idea that we, being North Carolinians, and having dealt with these people through 54 years as Peerless Mattress Company, may be able to take up and push the Sealy product far more in this territory than it could possibly be pushed by a Virginia or Maryland concern.

Although the figures for Richmond sales in North Carolina have never been published, we are inclined to believe that those sales have never remotely approached $50,000.00 in any one year. It may be that we could never get that much out of this one territory but it certainly would round out our territory from the standpoint of warehouse location, salesman's effort, and television coverage.

[fol. 769E] If I am out of line with any of the above, please simply drop the matter and advise me. If, on the other hand, you think that this may make sense to Joe Rudick, please approach him with this offer.

Try not to hold the fact that we are not up to par in South Carolina against us. We are going to bring that state up to par within the next year. This will not be true for 1956 but I think we will do it in 1957. And please remember, we are not asking for this Richmond territory to be given to us, we are offering to pay for it.

With kind personal regards,

Yours very truly, Sealy of the Carolinas, Inc.,
J. V. Moffitt, Jr.

jvm jr/bm

[fol. 770E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 393

Mr. J. V. Moffitt, Jr.
Sealy Mattress Co.
P. O. Box 598
Lexington, N. C.

November 27, 1956.

Dear Joe:

The writer has carefully reviewed your letter of November 23rd relative to the portion of North Carolina contained in the old Richmond territory and notes your offer to purchase it.

Personally, I think you are extremely liberal in your offer, however I am afraid that even with your liberal offer, I may not be able to prevail upon Joe Rudick to give up the territory.

During the meetings just past, I did not have much of an opportunity to talk to Joe because he had to return to Baltimore before the Licensee Meeting in order to go on the cruise they had arranged for their dealer-winners. I did have just a few minutes to mention to him the possibility that I might be able to get him some compensation for the territory, and I also pointed out to him I thought that logically, you could do much better than he could. I must admit, however, Joe did not show too much enthusiasm.

Mr. Rudick is going to meet me in Cleveland on my next trip to Massillon, Ohio, which I expect to make shortly after I return from my vacation on December 15th. I shall make it a point to discuss this matter with Joe at that time and see if I cannot sell him on what I consider to be a very liberal offer. I will keep you advised.

[fol. 771E] In conclusion, may I say that I am happy to note your determination to crack South Carolina to the extent of meeting par in 1957. More power to you and I hope that you will be successful. I have a hunch you will.

Very truly yours, Sealy, Incorporated, E. H. Bergman.

EHB:mc

[fol. 772E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 394

November 27, 1956.

Mr. Joe Rudick
Sealy Mattress Co.
2307 Hollins St.
Baltimore 23, Md.

Dear Joe:

Some time ago, I spoke to you concerning my thoughts on the proper transfer of the counties which you have in Northeastern Carolina to the Lexington territory. I still think that I am right.

The buying potential for these 16 counties is .1336. This indicates there is nothing in the way of a sizeable town in the entire territory and collectively, it amounts to a very small potential of business.

If you attempted to figure out the par for these counties in North Carolina, I think you would find that it would be somewhat less than a maximum of $50,000.00 a year. This amount of sales figured for royalty on the basis of 2.5% would indicate that the most royalty this segment of territory could produce would be somewhere in the neighborhood of $1200.00 a year.

Joe, I have been talking to Joe Moffitt about these counties, and I have received from him an offer of $7500.00 for this territory. To me, this is a fantastic offer because it is more royalty than this territory could earn in the next six or seven years.

Between now and the time I see you in Cleveland next month, I would like to have you give serious thought to my suggestion that you avail yourself of this opportunity and transfer this territory to the Lexington contract. Frankly, I think you are going to have a terrible time trying to sell furniture and give service on bedding in that territory from Baltimore.

[fol. 773E] Also, I have a feeling that these North Carolinians would prefer to do business with another North Carolinian rather than somebody from Virginia or Maryland. I think the records in Richmond will show that Sidney did virtually nothing down there, and if the truth were known, the main reason for it was that these Carolinians simply will not buy from anyone except a Carolinian.

Anyway, give some thought to it and you and I will discuss it further when I see you in Cleveland next month.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:mc

[fol. 774E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 395

SEALY COMPANY OF THE SOUTHEAST

Inter-Factory Correspondence

To: Mr. W. J. Craig
From: J. R. Haas
Subject: —

Date: Nov. 12, 1943
By: —

Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Re: Shipments into open territory

Dear Mr. Craig:

What we want is a report of shipments made into any open territory by the concern mostly closely located to the territory to serve it.

I am entirely willing for Chicago to serve South Dakota or for Des Moines to serve South Dakota, whichever one is the closest, for Milwaukee to serve Wisconsin, but I definitely want a report of the outside service on a separate report from the territorial service and the 2% bracket of course paid on this outside service.

Again if this service is rendered by anyone in the Sealy Group, I should be advised of the situation so that I will know that it handled in accordance with the way I want it handled. If I am the President of the Corporation and responsible for its actions I want to know what the Corporation is doing.

If the matter is in South Dakota and Mr. Kaplan has the opportunity of selling a car in South Dakota, there is no objection to him doing so provided it is handled on a separate report at the end of the month.

Kind regards, Sealy, Inc., J. R. H.

JRH:op

[fol. 775E] GOVERNMENT'S EXHIBIT No. 396

SEALY COMPANY OF THE SOUTHEAST

Inter-Factory Correspondence

Date: Nov. 8, 1943
By: —

To: Mr. W. J. Craig
From: J. R. Haas
Subject: —

Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Craig:

I'm not going to give Chicago or anyone else permission to ship merchandise into unfilled territories without definite agreement with them.

You say in case a buyer assembles a carload of merchandise in Chicago for shipment to a territory not covered by a Sealy plant that it could be handled by Chicago. Not without special permission. We want to know exactly who sells merchandise to any unfilled portion of the territory.

The U. S. Bedding Company is shipping into North Carolina and part of South Carolina on the old grants where it owned North and South Carolina. It is not shipping merchandise in any other territory. Neither do I want any of the Sealy Group to be shipping merchandise into a territory that is not covered by some factory unless we have special permission to work that territory.

Will you please let them be a little more definite in this situation?

Kind regards, Sealy, Inc., J. R. H.

JRH:op

[fol. 776E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 397

July 31, 1944.

Sealy Mattress Company
Liverpool, Preble & Franklin Streets
Pittsburgh 12, Pennsylvania

Attention: Mr. Bill Llewellyn

Dear Bill:

At the Market you waited on Mr. T. H. Shirk of Davis and Company, Cambridge, Ohio, and you gave him one of your price lists which is slightly different from ours, and has caused quite some confusion with this account. We are enclosing our price list, and as you will note, we do not make a quantity deal on any of the Sealy Products.

I am trying to straighten this misunderstanding with Mr. Shirk, as our Mr. De Haven is in Cambridge every month and we don't want to do anything to jeopardize this account. We will, in the future, have to be very careful with these border accounts so that we won't have a repetition of this.

With kindest personal regards, I am,

Yours very truly, Sealy Mattress Company, Herbert H. Neilson, Sales Manager.

HHN:bdm

[fol. 777E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 398

SEALY MATTRESS COMPANY

Liverpool, Preble and Franklin Streets
Zone 12, N.S., Pittsburgh, Penna.

August 7, 1944.

Mr. Herbert Neilson—Sales Manager
Sealy Mattress Company
4851 Spring Grove Avenue
Cincinnati, Ohio

Dear Herb:

At the Market I waited on Mr. T. H. Shirk of Davis and Company, Cambridge, Ohio, and spent not five minutes or fifteen minutes with him but at least two half-hour periods, maybe even more. I felt reasonably convinced, that, while he did not give me an order, Mr. Kountz, who has called on this man occasionally in the past, would receive an order on the occasion of his next visit this month.

After receiving your letter, I checked our Sealy territory and found that the Counties representing our border line of territory are: Washington, Morgan, Muskingum, Guernsey, Hamson, Carroll, Columbiana, and Mahoney. Since Cambridge is in this territory, I would appreciate your instructing our good friend, Mr. De Haven, to refrain from showing Sealy merchandise in our licensed Sealy area.

What you say about being careful concerning border accounts is true; and I will certainly consider it my responsibility, as I hope you will too, to keep you informed of our Sealy activity and the representation we make to our Sealy dealers concerning this line. I am putting your Company on our Sealy mailing list and all mailings will be marked for your attention.

It was nice to visit with you, even if for such a short time in Chicago, and I wanted to tell you before that your remarks at the Sales Meeting were very acceptable. Do not pass up the opportunity to see us if you ever get close to Pittsburgh.

Sincerely yours, Fort Pitt Bedding Company & Sealy Mattress Company, By (Signed) W. W. Llewellyn, Jr.

WWL/mc

[fol. 778E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 399

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Cincinnati, Ohio
Telephone Kirby 4860
4851 Spring Grove Avenue
Plant at Franklin, Warren County, Ohio

August 9, 1944.

Mr. John Brody, Vice-President
Sealy Mattress Company
666 Lake Shore Drive
Chicago, Illinois

Dear John:

I have run into a little difficulty with Pittsburgh, with one of our good accounts, Davis and Company of Cambridge, Ohio.

It seems like Bill Llewellyn worked with this account in Chicago, for Mr. Kountz, and he left with Mr. Shirk, of the Davis Company, their price list, which as you know, is entirely different than ours; as they show a twelve piece discount and a twenty-four piece discount, and pay P.M.'s on all numbers from the Texlan up.

I received a modest order from Davis Company of six pieces at Pittsburgh's low down price which is $20.40, less $1.00 P.M., and I in turn, returned this to the Davis Company of Cambridge, advising them that we did not have a quantity discount on Sealy Tuftless Mattresses. Then, I wrote a letter to Bill Llewellyn, copy of which I am also enclosing to you, he, in turn, comes back to us this morning, that this territory definitely belongs to Pittsburgh. According to our map, this County has

definitely been assigned to us. I will let you tactfully straighten it out for us.

With kindest personal regards, and waiting to hear from you, I am,

Yours very truly, Sealy Mattress Company, Herbert H. Neilson, Sales Manager.

HHN:bdm

Encls.

[fol. 779E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 400

August 9, 1944.

The Sealy Mattress Company
Liverpool, Preble and Franklin Streets
N.S. Pittsburgh 12, Pennsylvania

Attention: Mr. W. W. Llewellyn, Jr.

Dear Bill:

In reply to your letter of August 7th, there is evidently some mistake in several of the Counties that you mention that belong to Pittsburgh. In these border Counties, Mr. Brody assigned us Gallia, Meigs, Athens, Morgan, Noble, Muskingum, Guernsey, and we have consistently worked this territory since we started in business January 21, 1943.

I am sending a copy of this letter to John Brody, so he in turn can straighten this thing out, as I have just finished reading our Contract, and this would make Cambridge our division line.

Again thanking you for your prompt reply, and assuring you of our co-operation at all times, and with kindest personal regards, we are,

Yours very truly, Sealy Mattress Company, Herbert H. Neilson, Sales Manager.

HHN:bdm

cc: John Brody.

[fol. 780E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 401.

September 23, 1944.

Mr. Herbert H. Neilson
Sealy Mattress Co.
1125 Bank St.
Cincinnati, Ohio

Dear Herbert:

Your letter of Aug. 9 along with carbon copies of correspondence concerning the boundary line in Ohio or the Sealy plants at Cincinnati and Pittsburgh came to the office of the writer during his vacation. The correspondence was forwarded and held by the writer for recheck during a four-week trip I then made between Boston and Baltimore. Coming into Chicago last week for a Director's meeting, I dug into this matter and can report only as follows:

The original and official contracts covering the Sealy territories, including the territories in Ohio of Sealy at Cincinnati, Sealy at Cleveland and Sealy at Pittsburgh are all in Memphis for safe deposit in the custody of the president of Sealy, Mr. J. L. R. Haas. In case of conflicts between Sealy manufacturers on territory, the contracts speak for themselves. I hope this little territory misunderstanding will not have to go to Memphis for arbitration, and the attached copy of my letter to Pittsburgh may settle the matter between you and Pittsburgh without necessity of reference to the contracts.

Here in Chicago, Mr. Craig and the writer have marked maps, checked and rechecked in conformity with data gleaned from the contracts when the contracts were in Chicago, and rechecked against data on territory relayed to headquarters from Memphis, after the transfer of contracts to Memphis. The records of Mr. Craig and the maps indicate the following: Morgan, Muskingum and

Guernsey Counties in Eastern Ohio are not in the territory of Sealy at Pittsburgh, and are in the territory of Sealy at Cincinnati. The City in dispute to which you refer in your correspondence is Cambridge, Ohio, which is in Guernsey County, and therefore belongs to you in line with our understanding at Chicago of your contract.

I am sending copy of this letter to Pittsburgh and trust my investigation clears up the situation. I hope you hear from Pittsburgh confirming same, if not, you will have to refer the matter to Memphis. I believe this will be unnecessary. It is my pleasure to cooperate and try to clarify this misunderstanding for the benefit of yourself and Pittsburgh.

Kindest personal regards.

Sincerely yours, Sealy, Inc., J. M. Brody, Jr.

JMB:d

[fol. 781E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 402

September 23, 1944.

Ohio Boundary Line of Sealy at Cincinnati & Pittsburgh

Mr. J. R. Haas
J. M. Brody, Jr.

Dear Mr. Haas:

When we were in New York, I told you I was receiving correspondence from Sealy at Cincinnati and Sealy at Pittsburgh, with reference to the City of Cambridge in Guernsey County, Ohio, where a misunderstanding developed regarding an account at that point. It was necessary for me to fully check into our records and maps to accurately arbitrate this matter.

When I got to Pittsburgh, I further discussed the subject and left it open to be handled upon my return to Chicago.

This day I carefully checked with Mr. Craig our maps and records, accordingly I wrote to both plants as per attached copies of correspondence. I sincerely trust I have handled same to a conclusion and that the matter will not be referred to you. At least I have been thorough and diplomatic in my entire handling of this territory dispute. Personally I do not believe it to be serious. Definitely, according to our records here in Chicago, Cincinnati is in the right and Pittsburgh is in the wrong.

This for your information.

Sincerely, ——, ——.

JMB:d

[fol. 782E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 403

September 23, 1944.

Mr. W. W. Llewellyn, Jr.
Sealy Mattress Co.
Liverpool & Franklin
Pittsburgh, Pa.

Dear Bill:

I received a copy of your letter of Aug. 7 to Mr. Herbert Neilson of Sealy at Cincinnati, and at the same time I received copies of letters of July 31, 1944 and Aug. 9th, 1944 from Sealy at Cincinnati to you. All of this correspondence refers to the boundary line in Ohio of the Sealy plants at Pittsburgh and Cincinnati, in line with the records of Sealy Inc. taken from the actual contracts covering the territory.

Hereto attached is a copy of my letter to Mr. Neilson in this connection and same is self-explanatory. I am likewise sending him a copy of this letter to you in the hope that thru my correspondence you will adjust this misunderstanding. Otherwise there is nothing further the writer can do in the matter and Cincinnati and Pittsburgh will have to refer to Memphis and to the signed contracts covering the situation. I hope you can write me that based upon your recheck of your contract reference to Memphis will be unnecessary.

Specifically yours of Aug. 7th to Cincinnati states that the following counties in Ohio are in your territory: Washington, Morgan, Muskingum, Guernsey, Harrison, Carroll, Columbiana and Mahoney.

You are exactly right, so far as Washington, Harrison, Carroll, Columbiana and Mahoney Counties are concerned. On the other hand, you are definitely mistaken, in accordance with the official records of Sealy territory here at headquarters so far as Morgan, Muskingum and Guernsey Counties are concerned. These three counties were not

the territory of Sealy at Pittsburgh and they were open territory belonging to Sealy Inc. Therefore these three counties were definitely assigned by Sealy Inc. to Sealy at Cincinnati.

Cambridge, Ohio happens to be in Guernsey County, and must therefore be considered Cincinnati territory unless are records are in error, which the writer does not believe to be the case. We trust therefore you will cooperate and confirm same direct to Cincinnati after rechecking your records, and thus avoid reference and the burden of arbitration to Mr. J. R. Haas. Personally, as you know we at headquarters can simply refer to the records in these cases and in that manner try to settle matters from our records by correspondence.

Kind regards.

Sincerely, Sealy, Inc.

JMB:d

[fol. 783E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 404

September 28, 1944.

Mr. J. R. Haas

Dear Mr. Haas:

In making our recent mailing of broadsides mailing list, we went through them as fast as possible. Since then, we have had a chance to do a little checking but do not feel that we will ever have a 100% accurate check. However, I do find some towns covered by both Portland and Denver, also some dealers in Nevada on the Los Angeles list.

I also find four cities in Kentucky in which it appears that both Memphis and Cincinnati are covering. These are:

Sommerset
Williamsburg
Harrisburg
Danville
Lawrenceburg
Winchester.

What do I do in a case of this kind, or do I do anything?

Kindest regards.

Yours very truly, Sealy, Incorporated, W. J. Craig.

WJC:HS

[fol. 784E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 409

September 16, 1949.

Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Attn: Mr. Ernest Wuliger

Dear Ernest:

As you know, we have entered into a contract with the Super Rest Products Corporation of Rochester, New York, to serve the western part of New York state. I notice that you have been selling a small amount of Sealy merchandise in that area, and I trust you have made arrangements to withdraw your representation effective October 1, 1949.

Anything you can do to help the new fellows over in Rochester will be appreciated by all members of Sealy.

Best regards.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:d

[fol. 785E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 410

May 27, 1950.

Air Mail

Mr. Earl H. Bergmann
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Dear Earl:

I am writing this letter to you regarding the situation we are again confronted with in the State of Idaho with deliveries of Sealy Mattresses, made by the Denver Plant, to accounts who are in direct competition with our established Sealy Dealers in that territory. I thought, from the information received from you as well as that received from the Denver Plant, that this business had ceased and we have again begun making efforts to thoroughly cover that territory and, after this has been done, the Z.C.M.I., who are jobbers from Salt Lake City, are still delivering Sealy Products into that territory, particularly, to those towns where we have sound established accounts.

I have received a telephone call this morning from Nampa, Idaho, from Halliday Furniture Company, who have been a good Sealy Account for over thirty years and they are terrifically excited because of Sealy Merchandise delivered to Hale Furniture Company, of that city, to whom we have not been selling. Frankly speaking an account like Halliday Furniture Company while they are not a tremendous volume account have been, all through the years, the most loyal to Sealy. We have from time to time sent you some of the fine publicity Sealy has got through that source and when Mr. Halliday called me, regarding this instance, and expressed his indignity towards us—frankly, I couldn't blame him one bit. Now, I don't know what you want to do in this

matter—but, once and for all, you must step in and straighten this thing out, because if it isn't, I hereby put myself on record, that beginning with the Seattle Market, which will be held on July 10 for the Northwest Territory, to open Sealy Accounts in the States of Utah and Montana. I would therefore appreciate hearing from you in this respect so I can guide myself accordingly.
[fol. 786E] Your prompt reply in this matter will be appreciated.

Very truly yours, Sealy Mattress Company, Ben Rosenfeld.

BR/mc

cc: Mr. J. R. Lawrence—Chicago, Mr. Louis G. Haas—Memphis, Sealy Mattress Co.—Denver, Mr. Carl Halliday—Nampa.

[fol. 787E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 411

Sealy Mattress Company
38-42 Everett Street
Allston 34, Massachusetts

November 16, 1951.
Dict. 11/15/51.

Attention: Mr. I. A. Wiener

Dear Isadore:.

It is my understanding that the Pinault Furniture Company of Pawtucket, Rhode Island is running ads on Sealy merchandise that they obtain from their store located in Attelboro, Massachusetts. If this is true, it is necessary that you immediately notify Pinault that this is not permitted and in accordance with your contract, can be assessed against you at the rate of $10.00 for each mattress that they so advertise and sell.

One of the ads that has been called to my attention is their advertisement of the so-called latex rubber In-pac mattresses that you have been selling at $29.95. Certainly, there is no reason why any customer in the Rhode Island territory should be advertising this mattress.

It is also my understanding that while the Waterbury plant is selling the Pawtucket, Rhode Island store that this store also gets mattresses from the Attelboro, Massachusetts store and that there have been occasions where the Pawtucket store had advertised resale Sealy items which were not purchased through Waterbury but came from your plant through Attelboro. This again is not according to our agreement to work with each other, and if it is true, it will be necessary for you to take immediate steps to discontinue this practice on the part of Pinault.

I wish you would write me fully concerning this matter because I am not entirely clear in my thinking concerning it.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 788E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 412

Dict. 1/4/52.
January 8, 1952.

Sealy Mattress Company
38 Everett Street
Allston 34, Massachusetts

Attention: Mr. J. L. Wiener

Dear Jerry:

I received a pencil notation from one of the salesmen in the Waterbury plant telling me that you personally were in the Stone Furniture Company in Melford and that you tried to sell them Sealy merchandise and the idea that you would ship these goods to another store in your territory and then it could be reshipped to Melford.

It seems that you told him the reason you were doing this was because you were able to sell Sealy items cheaper than the Waterbury plant.

Jerry, I don't know what the full facts are concerning this matter, but if you did what you are accused of doing, I want to tell you that you are going to be in serious trouble in Sealy because we are not going to tolerate that kind of tactics within this family.

Will you please advise me fully as to your side of this accusation?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 789E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 413

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Los Angeles 44, California
Telephone Pleasant 2-3773
5810 South Normandie Avenue

July 24, 1952.

Mr. E. H. Bergmann
Sealy, Incorporated
2012 West 25th Street
United Office Building Room 418
Cleveland 13, Ohio

Dear Earl:

It is with a great deal of reluctance that I present the following problem to you as President of Sealy Incorpated. Before mentioning the problem, let me advise you that we have made previous attempts to solve this problem on an intra-plant level, but without success.

I will attempt to state the facts as impersonally as possible. The problem you are asked to decide is whether or not there has been an infringement of California Sealy's territorial rights by the Chicago licensee.

The facts are that the Los Angeles plant through their sales representative, Walter Creelman, worked on the specifications and samples for mattresses and boxsprings for the Corona Naval Hospital at Corona, California. They had previously purchased our Natural Rest and had contacted us for the same type bedding.

Lieutenant Smith of the Corona Naval Hospital accepted and approved our regular Natural Rest mattress and boxspring, again substituting only an 8 ounce ACA tick instead of the Opal tick which we were then using. Our regular price list cost in April and May of 1951 for the

Natural Rest was accepted at $32.25 each piece for approximately 300 mattresses and 300 boxsprings—all twins.

We were advised that our confirmation and purchase order would be sent to us as soon as possible during the middle of May as the merchandise was needed in a hurry.

A week or ten days passed and no purchase order had been received so we called Lt. Smith and to our surprise, he advised us that Sealy had already received the order. We got lost in government red-tape trying to trace the order only to discover that Mr. Mier Kaplan of Chicago, who was visiting in California at the time, remarked that they had shipped a nice order to the Corona Naval Hospital on government bid.

[fol. 790E] Mr. Mier Kaplan explained to us, after I hit the ceiling, that they got a request for bid on very sketchy specifications from the Brooklyn Naval Depot and they had received the bid award. He assured us that it was not our Natural Rest order as nothing specific relating to specifications were sent to their Chicago plant and that by no means had they shipped Natural Rests into California.

After contacting Morrie Kaplan by phone, he advised me that he was unaware of the facts and proceeded to get them second hand from his father and Ed. Siegal. His attitude was that his father and Ed. Siegal insisted this was merely a general open specification bid and there was nothing he could do about the matter.

The question of infringement came up only after we discussed nearly a year later that the Corona Naval Hospital did actually receive Natural Rest mattresses and boxsprings. The mattresses have Natural Rest silk labels with the retail prices blocked out and law labels and shipping tags clearly marked Sealy Natural Rest, Reqn number 297-3079/51 which Lt. Smith assures us were our specifications on the Natural Rest which he had approved.

This new evidence was presented to Chicago this past June and the same vague answer and denials were made. The question is then clear: is not the selling and shipping of labeled resale merchandise into another licensee's territory an infringement under our contracts? Please attempt to decide this problem on the facts and the legal provisions of our contract.

I am enclosing copies of correspondence and specifications which we sent to Corona Naval Hospital during our negotiations for this job, outlining specifically our regular Natural Rest specifications and price list costs. Also shipping tags taken off the merchandise received from Chicago by the Corona Naval Hospital are enclosed.

If you as president, cannot iron this out before the Board Meeting, perhaps you would like to put it on the agenda for the next board meeting.

[fol. 791E] This as you well know, involves a gross profit of approximately $30.00 a set or roughly about $9,000, based on our costs of $33.75 for each set and they were sold for $64.50 per set.

Yours very truly, J. J. Willens, General Manager,
Sealy Mattress Company of Southern California.

Enclosures

CC: M. Kaplan
JJW/hb

[fol. 792E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 413-A

July 29, 1952.

Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Attention: Mr. M. A. Kaplan

Dear Morry:

I have before me Joe Willens letter of July 24, together with work ticket taken from a mattress and a shipment ticket taken apparently from a shipment of mattresses from your plant to the Corona Naval Hospital at Corona, California. I note that you were sent a copy of this letter.

Having handled 21 cases before the Grand Jury today hardly qualifies me to handle this case because I am only experienced in hearing the states side. In hearing cases presented on that basis it appears to me that you are guilty of a felony and that California has you over a barrel so to speak.

In Sealy, of course, we would hear the defendants side of the case so I am going to stray from my Grand Jury techniques and permit you, the defendant, to present proof that you are innocent of the charges made against you.

Morry, laying all jokes aside lets got this ironed out at intra-plant level so as to avoid airing at a board or committee meeting. Lets clean it up next week when I will spend 3 days in the Chicago office.

Very truly yours, Sealy Incorporated, E. H. Bergmann.

EHB/dla

[fol. 793E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 413-B

Sealy Mattress Company
5810 S. Normandie Avenue
Los Angeles 44, California

Dict. 8/25/52.
August 26, 1952.

Attention: Mr. J. J. Willens

Dear Joe:

Morry Kaplan and I discussed the Corona Navy order with Mr. Seniel Ostrow.

I went over to Morry's office and reviewed the entire file on this matter, and I find that this is a case that possibly could be argued either way. The original order as confirmed to the Chicago plant did not indicate in any way that this was an order for Sealy Natural Rest Mattresses. There were a number of other bids on this order, of which your plant was not present. This would tend to indicate that it was not an order that originated possibly in some Sealy plant.

The mere fact that the merchandise was delivered out of the Chicago territory with Sealy labels affixed and other Sealy identification used, of course, would fall within the meaning of the violation of the Sealy contract where the tentative clause is stated of being an assessment of $10.00 per mattress by Seally, Inc., who in turn, if they collect same, are to pay it to the damaged plant.

It is my suggestion to you that you get in touch with Morry Kaplan and work out some kind of a deal with him to cover the commission that would go to Walter Creelman and, also, the percentage of bonus that you would get on the set sales of this particular order. It seems to me that this might be an amiable way of closing the case.

Personal regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

cc: M. A. Kaplan

[fol. 794E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 414

Dict. 12/5/52.
December 8, 1952.

Sealy Mattress Company
933 North Halsted Street
Chicago 22, Illinois

Attention: Mr. M. A. Kaplan

Dear Morry:

I have just concluded reading your letter of December 3rd regarding the Pearson ad as I commented on in my letter of November 28th. I assure you that I understand fully the difficulty that must be experienced in trying to hold retailers in line to our policies which I also know are not too compatible to the freedom of action which a lot of fast operators personally desire.

The mere fact that this fellow told your salesman that he was going to run the ad is not sufficient to justify their breaking a gentlemanly understanding with you, which could only be the case, because of discussion that you had with him on the previous occasion.

Morry, I am wondering if under the circumstances of this dual operation of stores that it might not be well to consider the possibility of a swap of some territory with Louisville in order to put Richmond in your territory and possibly give Louisville some other territory that you have in and around the fringe of the Louisville territory. I am, of course, not familiar with the volume of business that you are doing on the bordering counties with Louisville, but it may be that this is a possible solution.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ht

[fol. 795E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 415

Dict. 3/30/53.
March 31, 1953.

Mr. M. A. Kaplan
Sealy Mattress Company
933 North Halsted Street
Chicago 22, Illinois

Dear Morry:

Some time ago I spoke to you about the possibility of your trading Richmond, Indiana and the County within which it is located for possibly the County embracing Terre Haute. This suggestion was made in order to eliminate a situation which is becoming very embarrassing in the Louisville territory owing to the activity of a dealer of yours in Indianapolis by the name of Pearson who has a store in Richmond, Indiana.

It now develops that Pearson has a store in Terre Haute which eliminates the possibility of a swap but another development is coming up owing to Pearson having purchased a store in Columbus, Indiana. This town is located in a County which is too deep from the territorial line. In other words, there is a County between the line which divides your territory and Louisville. Obviously, Sealy merchandise getting into that town could be very very disturbing.

I do not know whether you are making direct shipments into Richmond or not, but it occurs to me that if you are you should immediately take steps to have your shipping department notified to cease making the shipments because of the provision of the contract, because you know that we are not permitted knowingly to make shipment of goods even to a dealer if we know that they are going to be transported into another territory for sale. This, of course, would also apply to your warehouse in Indianapolis.

I have suggested to Harry Forbes that he make a trip to Chicago and discuss this matter personally with you rather than with Mac. I am sure that the two of you can work out something whereby we will be able to solve a problem which cannot be left to self determination because it will get worse and not better unless we take definite steps to correct or to control the situation.
[fol: 796E] After you and Harry have had an opportunity to discuss the matter, I would like to have a note from both of you as to how you have worked out the matter so that I may be guided accordingly.

Regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

cc: H. L. Forbes.

[fol. 797E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 415-A

WESTERN UNION

W. P. Marshall, President

MAY 11, 1953.

HARRY B FORBES
LOGAN COMPANY
SEALY MATTRESS COMPANY
1115 FRANKLIN STREET
LOUISVILLE 6 KENTUCY

CHICAGO PLANT HAS BEEN ADVISED AGAINST SHIPPNG SEALY PRODUCTS INTO YOUR EXCLUSIVE TERRITORY EXPECT DEFINITE ACTION TODAY

SEALY INCORPORATED
E. H. BERGMANN
PRESIDENT

[fol. 798E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 415-B

WESTERN UNION

W. P. Marshall, President

MAY 11, 1953.

MR M A KAPLAN
SEALY MATTRESS COMPANY
903 NORTH HALSTED STREET
CHICAGO 22 ILLINOIS

IMPERATIVE FOR YOUR OWN PROTECTON THAT ALL SALES OR SHIPMENTS OF SEALY PRODUCTS DIRECT OR INDIRECT TO PIERSON IN RICHMOND SEYMOUR COLUMBUS AND FRANKLIN INDIANA CEASE AT ONCE LOUISVILLE LICENSE HAS FORMALLY ASKED FOR ACTION UNDER PARAGRAPH 4 PART 4B AND PARAGRAPH 5 PART A AND B PLEASE WIRE LOUISVILLE TODAY OF YOUR ACTION ON THIS MATTER

SEALY INCORPORATED
E H BERGMANN

[fol. 799E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 416

May 12, 1953.

Mr. Bergmann:

The following telegram was received this morning from Louisville, Kentucky:

"DISAPPOINTED TERRITORIAL TERMS OUR CONTRACT NOT BEING RESPECTED WAYNE JOHNSON JACKSON BARTHOLOMEW COUNTIES INDIANA PLEASE ADVISE"

R S Logan.

[fol. 800E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 417

LOGAN CO.

Since 1876
Louisville 6, Kentucky
Bedding Division

May 12, 1953.

Mr. E. H. Bergmann, President
Sealy, Inc.
2012 W. 25th Street
United Office Bldg. #418
Cleveland 13, Ohio

Re: Wayne, Johnson, Jackson, Bartholomew Counties Indiana.

Dear Earl:

This confirms our telephone conversation of Monday night, May 11th.

For quite some time we have tried to work with the Chicago factory concerning their merchandise being sold in Pearson's Richmond, Indiana, our territory.

On March 30th, I telephoned you that Pearson's had bought stores in three more of our counties and we probably could expect trouble. I asked you to intervene for me.

You in turn wrote the Chicago factory on March 31st

but asked me to see the Chicago factory and try to work out something.

I talked with Morry on April 3rd about the problem and was assured it would be worked out.

On April 8th Morry wrote me that Pearson's had been advised not to put any Sealy merchandise in Columbus, Indiana. Also he advised that Mac would be in Chicago the following week and the matter would be handled—nothing has been done. These seem to us to be the facts:

1. Pearson's have no respect for territorial lines.
2. Pearson's pay no attention to pleas by the Chicago factory.
3. Encroachment on our territory cannot be stopped until Sealy, Inc. steps in.

[fol. 801E] These *are* facts:

1. Pearson's ran a $20.00 trade-in deal on a "Genuine Sealy innerspring mattress" on May 7th in the "Evening Republican" Columbus, Indiana.
2. We have a very good account in Columbus most upset.
3. The Indiana territory has been messed up for three years. First the Maish Company now two Sealy factories servicing the same towns.

Therefore we expect and deserve the following:

1. That the Chicago factory cease its flow of Sealy merchandise into our territory.
2. That they remove all Sealy merchandise of their manufacture from all points in our territory immediately.
3. That they be put on notice we expect the contract clause of $10.00 per item enforced from May 11th.

Please pardon this lengthy letter.

We have been most patient but our patience is now exhausted. We request official action by Sealy, Inc. immediately.

Very cordially yours, Harry L. Forbes, Sales Manager.

HLF:mh

[fol. 802E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 417-A

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Chicago 22, Illinois
Telephone Michigan 2-2050
903-933 North Halsted Street

May 13, 1953.

Mr. E. H. Bergmann
Sealy, Incorporated
2012 West 25th Street
Cleveland, Ohio

Dear Earl:

Your telegram today, from Toronto, Canada, was anti-climatic. I had received a telephone call from Henry Lipson yesterday, who told me that he had received a call from Harry Forbes with reference to the matter discussed in your wire.

We called Pearson's at Louisville yesterday, and the general manager there advised us that orders had been sent out to the four stores involved, asking that they do no advertising or selling of Sealy merchandise until such time as they would be so advised.

As I explained yesterday in the letter sent to Harry Forbes, one of the store managers, taking the merchandiser which comes out from the main office of Pearson's in Indianapolis, either knowingly or without such knowledge, ran an ad anyway.

We called Pearson's again today, and asked that they again specifically telephone each of the four store managers to refrain from any advertising until such time as we make arrangements to meet. I have already advised Harry Forbes that we have a meeting set up in Chicago on May 22nd, at 12 o'clock noon, with the Pearson group

and have invited him to come in and see if it is possible to work out a mutually satisfactory arrangement. If it is not, we are perfectly willing to give up the Pearson business.

This represents all that we can do at this time. Should there be a repetition of an ad between now and May 22nd, [fol. 803E] I must state now that there is nothing available for us to do, and if Louisville wishes to take action under Paragraph 4, Part 4-B, and Paragraph 5, Parts A and B, they can do so.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: Harry Forbes, Louisville, C. B. McGillivray.

[fol. 804E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 418

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Chicago 22, Illinois
Telephone MIchigan 2-2050
903-933 North Halsted Street

May 15, 1953

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland, Ohio

Dear Earl:

I received a copy of letter addressed to you, dated May 12th, from Harry Forbes, Sales Manager of the Sealy Plant in Louisville.

As indicated previously, we have requested Pearson's in Indianapolis, both by long distance and confirmation by telegram and letter, that they distribute no goods in the four cities involved. We have also asked them to make sure their managers do not use their mat service already in the hands of such managers. Of course, I have reference only to Sealy items appearing in their mat service.

Before things get too far in this situation, I want to clarify a few things in Mr. Forbes' mind.

When he says Pearson's have no respect for territorial lines, he must remember that no retailer can ever quite understand Sealy's situation with reference to having two factories serve the same dealer. We have been through this with the Leath situation, recently with St. Paul, and again recently with Des Moines where circumstances were such that they serviced an account that we had developed, made a fine presentation for, only to have them walk in at the propitious moment, write a large order and distribute

from their central warehouse in Davenport into our territory in Illinois. This has been going on for several years now with this particular account. Frankly, I don't know what the solution is going to be. You may recall that I had suggested this territory, if possible, be developed for a licensee right in Davenport because the river, which now separates the Iowa and Illinois territory, is an artificial [fol. 805E] barrier from the point of view of economics of distribution in the territory. Most stores have operations in the Tri-Cities and can't understand why their branch store can't be serviced by their main warehouse.

The statement that Pearson's pay no attention to pleas by Chicago may or may not be true. Their operations are such that it is difficult for them to live up to such a plea by us.

Pearson's running a $20.00 trade-in deal is within Sealy's rules and principles of discount merchandise. This was a $59.50 mattress value, less $20.00 allowance for trade-in. This is just an attempt by Pearson's to circumvent the agreed principle in Indianapolis not to use price comparatives.

The Chicago factory is not now nor has it been shipping merchandise directly into the Indianapolis territory.

We cannot remove Sealy merchandise of our manufacture from points beyond our territory and do not intend to do so.

Should further merchandise be distributed from anybody in Indiana or another point into areas beyond our own, on or after May 11th, we will attempt to request such distributor to refrain from so doing.

Should, however, such goods be distributed beyond our territory by distributors now located in our territory, and should Louisville or any other licensee choose to execute their contract clause, we would be very happy to defend such a suit, should Sealy Incorporated or Licensee choose to bring one.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: Harry Forbes—Louisville, C. B. McGillivray.

[fol. 806E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 419

Dict. 5/19/53.
May 20, 1953.

Mr. M. A. Kaplan
Sealy Mattress Company
933 North Halsted Street
Chicago 22, Illinois

Dear Morry:

I find upon my return from Canada your letter of May 13 relative to the Louisville incident, and in one way I can agree with you that the telegram which I sent from Toronto, Canada as being somewhat anticlimactic. I say that it was somewhat anticlimactic because I knew from a telephone conversation held with Harry Forbes in Toronto that he had spoken to Henry Lipson and he, in turn, to you and that the meeting with Pearson on the 22nd was known to me in that way. On the other hand, Morry, it's not anticlimactic because this was not a case of defending from the important to the trivial.

This matter has been growing in magnitude for some time and, if my memory is right, has been going on for nearly six months or more, and as I pointed out in my letter on March 31st, procrastination would not solve the problem.

When I spoke to Harry Forbes in Toronto he was quite exercised and, apparently, was being told what to say by either their attorney or Mr. Logan himself. He spoke about the penalty under the contract, and I know well enough that that did not come from Harry Forbes and must have represented a reading of the contract and study of same by some legal mind and, therefore, I was quite concerned because of the danger to you.

My main reason for sending the wire to you was to put you on a rather abrupt notice of the danger with which you were confronted because I did not want to see a guy who I have great personal admiration for, and to whom I am indebted in many ways, and one whom I consider a

most personal friend, to get hurt in a matter like this which could be very serious.

Another reason for the wire was that I told Harry Forbes that I felt that inasmuch as this matter had been permitted to go along more or less on an unsettled basis and somewhat with an indefinite basis of understanding [fol. 807E] so far as Richmond was concerned in the first place, that the penalty clause should not be considered as applying until there had been some definite notice given of a date beyond which the situation would not be tolerated. This date was agreed on as being May 11th.

Your telephone calls to Pearson on May 12th and again on May 13th, I believe, should eliminate any further advertisements of Sealy merchandise within the Louisville territory. My statement to Harry Forbes that the contract clauses should not apply until after May 11th will result in elimination of any further controversies or penalties because of Sealy merchandise being sold and delivered into the Louisville territory.

I hope that the meeting of May 22nd will clear this matter of contention from the records completely and in connection with that meeting, Morry, I want to point out to you in all frankness that the crux of the entire affair is the fact that Sealy merchandise is going into the Louisville territory from your plant and that in order to protect yourself you must see to it that no more merchandise bearing Sealy labels crosses the line of demarkation of the two territories. I know what these problems are and I hate like the devil to have to suggest that it may be necessary to give up selling merchandise to Pearson, but such is the nature of our contracts and you and I know that within the Sealy contract it is not possible for a licensee to be everything to every person. It is a rather tough penalty but there isn't much that you and I can do about it.

In conclusion, I still believe that it might be possible for some sort of a switch to be made with certain counties so as to eliminate the Pearson matter. However, on the other hand, if Pearson is going to continue to expand further and further into southern Indiana there may be only one final solution, and that is no further sales to

Pearson of Sealy goods. I know you will handle it correctly. I'm awful sorry that the matter has come up and I know you realize that I am more or less in the middle on the entire deal.

Personal regards.

Yours very truly, Sealy, Incorporated.

[fol. 808E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 420

May 19, 1953.

Mr. Harry M. Forbes
Sealy Mattress Company
1115 Franklin Street
Louisville 6, Kentucky

Dear Harry:

The controversy between the Louisville and Chicago Plants over Pearson's sale of city merchandise is having full attention of the national office.

It is my understanding that a conference has been set up with the principals of Pearson's on May 22nd and that you have been invited to attend this meeting.

This office does not know whether a middle of the road program can be formulated or not, but every effort should be made to work out an arrangement that will be satisfactory to all concerned. Such an arrangement could hardly be devised without the active participation of principals from your Company.

This letter requests that this meeting be attended by your people and that every effort be made to come to a satisfactory conclusion. May I point out this one admonition, namely, selling of Sealy merchandise is the primary purpose of our association with each other.

Very truly yours, Earl H. Bergmann.

EHB/dg

cc to M. A. Kaplan

[fol. 809E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 421

Dict. 5/19/53.
May 20, 1953.

Mr. H. L. Forbes
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Dear Harry:

The writer is back from Canada and has been reviewing your letter of May 12th relative to the Chicago incident of Sealy merchandise being channeled thru Pearson's into the Louisville territory.

A wire was dispatched by the writer to the attention of Mr. M. A. Kaplan of the Chicago plant telling him that all sales and delivery of merchandise into the Louisville territory must cease as of May 11th.

I have also been reviewing a rather lengthy letter from Mr. Kaplan on the subject and he points out that the meeting of May 22nd has been set up with Pearson and that you have been invited to attend with the idea of trying to work out something that would be amiable and agreeable to all.

Mr. Kaplan also points out to me that he spoke to Pearson's on May 12th and again on May 13th asking specifically that no merchandise whatsoever of Sealy nature be advertised or handled by any of the stores within the Louisville territory.

It is my feeling that the matter will be concluded satisfactorily to all concerned on May 22nd. It is also the feeling of the writer that there will be no further occurrence of advertisements or handling of Sealy merchandise by any of these stores until after the May 22nd meeting, at which time something concise, undoubtedly, will be worked out on a satisfactory basis one way or the other to all concerned.

[fol. 810E] Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlt

[fol. 811E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 422

January 14, 1954.

To: Mr. E. H. Bergmann

Dear Earl:

Mr. Ralph Swearingen of the Louisville plant was in my office yesterday and brought up the matter of the Pearson Stores of Indianapolis, Indiana selling and delivering Sealy merchandise in the towns of Seymore, Franklin and Richmond, Indiana. It seems that the program that was supposed to have been worked out with the Chicago plant is not operating due to several things.

Mr. Swearingen says he is not properly advised by the Chicago plant regarding promotions that are going to be run, and he has difficulty getting answers to his inquiries to that plant. He was invited to participate in one promotion of 92 pieces, but since it was of a type of construction and ticking that he did not carry he asked the Chicago plant to go ahead and fill the order.

What is more disturbing to him than anything else is that the stores in those towns are of the second-hand nature, and the sale of Sealy products thru those outlets has threatened to move him out of the accounts he is now selling in those towns. He has a very good account in Seymore that is about to leave him due to the fact that he cannot control the promotions that are being advertised by the Pearson Store in Seymore.

I, frankly, do not know what the answer to the situation is. I asked him to give me the volume of business he has done in those towns so that perhaps we can measure it against the volume of business that Pearson does in those towns. It may be that if the volume that Pearson does is of little consequence we could get them not to ship Sealy merchandise from Indianapolis to stores in those towns.

Pearson has a store in Columbus, Indiana which they are not shipping Sealy merchandise to due to the fact that

the Louisville plant took a very strong stand against it. They have quite a valuable account in Columbus that is giving them a very good volume.

I don't know what the situation is with Pearson or what their reaction would be if you asked them not to ship to Columbus, Seymore, Franklin and Richmond. I understand that Pearson now operates 19 stores and is on an aggressive program of buying up rundown furniture stores in towns all over Indiana and trying to bring them back to life. If they pursue this program they will have more and more stores in the Louisville area.

Mr. Swearingen is quite disturbed about the matter as it is affecting his handling of accounts all thru Southern Indiana and apparently he has not been able to work anything out with Mr. McGillivray of the Chicago plant. I am sending a copy of this letter to Joe Haas in Atlanta and also to Morry to see if one of us can't come up with some idea as to a solution to this problem.

J. R. Lawrence.

[fol. 812E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 423

January 26, 1954.

Mr. Harry A. Kaplan
Sealy Mattress Co.
903 Halstead St.
Chicago 22, Illinois

Dear Mr. Kaplan:

I was informed this week that Pearson store in Columbus, Indiana had Sealy merchandise.

This has never been cleared with Columbus as we have one of our best accounts in this area and he has never agreed that Pearson's should handle Sealy merchandise. Today, I have talked with Mr. Roger Lawrence regarding our territory and I am awaiting a reply from him as to the action which he and Mr. Earl Bergmann will take. It seems that it will be impossible for us to work along the lines that you suggested to Mr. Bob Howard and I when we were in Chicago. Furthermore, we do not run the promotions that you run in your plant and the advertising is somewhat different and we feel it is hurting our territory very much, especially Buchanan-Jones.

We ask that you have this merchandise removed from this store at once and await an answer from Mr. Bergmann and Lawrence regarding the territory.

Best regards.

Yours very truly, Logan Co., Ralph B. Swearingen, Sales Manager.

S:m

[fol. 813E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 424

Mr. J. R. Lawrence, Vice-Pres. January 26, 1954.
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Roger:

When I was in Chicago I was talking to you regarding trouble we were having with the Chicago plant.

At that time you asked me to give you the three towns that Pearson's were delivering to in our territory. They are as follows: Buchanan-Jones, Columbus, Indiana; North Vincennes Home Furn., Vinconnes, Indiana; Greemann Furniture, Seymour, Indiana.

The volume for Buchanan-Jones for 1953 was $18,714.75; for North Vincennes Home Furn. $979.90 and Greemann Furniture in Seymour $2,961.40. Last week we found out that Pearson's were delivering merchandise to their store in Columbus, Indiana. This is the one town that we demanded Chicago to stay out of because we feel Buchanan-Jones has done a very good job for us and he will not go along with a store like Pearson's which is in Columbus and handling Sealy merchandise. So we feel and know we will lose Buchanan-Jones if this continues. As you told me in our meeting, we have full say in our territory. So as of this date, I am asking you to advise Chicago to stay out of our territory which is Indianapolis south. We have tried to work out something but it has proved everything but satisfactory.

I also discussed with you that promotions that we run and the promotions that Chicago runs are a lot different. Therefore, we are not able to offer as many as the Chicago plant. We feel that this is hurting us very much and that is the reason for this letter. We would appreciate hearing from you at once on action to be taken.

Yours very truly, Logan Co., Ralph B. Swearingen,
Sales Manager.

S:m

[fol. 814E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 425

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

January 26, 1954.

Sealy, Inc.
United Office Bldg. Room 148
Cleveland 13, Ohio

Attention: Mr. Earl H. Bergmann, Pres.

Dear Earl:

I understand that at this time you are on a vacation and hope you are enjoying yourself very much. The reason for this letter is regarding the Pearson chains in Indianapolis.

We have asked the Chicago plant not to deliver in Columbus, Indiana as this week I was informed that Pearson store in Columbus had Sealy merchandise in their window. As I have discussed with you, we have one of our biggest accounts in this area, Buchanan-Jones, who ran $18,714.75 for the year 1953 and we feel, the same as Mr. Jones, that he has taken Sealy in Columbus and has done a very outstanding job. He does not want Pearson's, which is very much of a second hand store as far as Columbus is concerned, handling a line like Sealy.

He feels he has accomplished the ground work and is now in a position to enjoy some nice volume which is profitable to both himself and the Logan Co. I ask that you have Chicago withdraw this merchandise from this store as soon as possible.

Earl, I am sure this set-up with Chicago will never work and I am wondering how much authority we have

in our territory. Chicago runs a lot of promotions that we are unable to make and we feel that it is hurting us in other areas. We would appreciate hearing from you at once.

Yours very truly, Logan Co., Ralph B. Swearingen, Sales Manager.

S:m

[fol. 815E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 426

January 28, 1954.

Mr. Ralph B. Swearingen
Sealy Mattress Company
200 Cabel Street
Louisville, Kentucky

Dear Mr. Swearingen:

Mr. Kaplan gave me your letter of January 26th for reply.

The two executives at Pearson's are out of the city and are not expected back until Saturday or Monday (January 30th or February 1st).

I will call them with reference to the Columbus, Indiana store, upon their return to the city.

It is not going to be very easy at this point to tell them to remove goods from Columbus after we reinstated Sealy goods in that store at the instructions of Harry Forbes. Forbes' instructions were later confirmed by Leon Prising who also indicated it was satisfactory to ship.

Nevertheless, we will do all we can.

Very truly yours, C. B. McGillivray, Sales Manager, Sealy Mattress Company.

CBM:H

cc: M. A. Kaplan, J. R. Lawrence, E. H. Bergmann.

[fol. 816E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 427

WESTERN UNION

W. P. Marshall, President

2/5/54.

M. A. KAPLAN,
SEALY MATTRESS CO.,
903 N. HALSTEAD ST.,
CHICAGO, ILLINOIS

RALPH B. SWEARINGEN,
SEALY MATTRESS CO.,
200 CABEL ST.,
LOUISVILLE, KY.

REQUEST MEETING ON PEARSON MATTER CHICAGO OFFICE FRIDAY FEBRUARY 12TH 9:30 A.M. LETTER FOLLOWING

EARL BERGMANN
SEALY INC.

[fol. 817E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 428

WESTERN UNION

W. P. Marshall, President

CAJ164 6 COLLECT=WUX LOUISVILLE KY 8 126PMC=

SEALY INC, ATT EARL H BERGMANN= 1954 FEB 8 PM 3:04
666 LAKE SHORE DRIVE=

WILL ATTEND MEETING FEB 12=

R B SWEARINGEN
LOGAN CO=

[fol. 818E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 429

February 5, 1954.

Air Mail

To: Mr. M. A. Kaplan
Sealy Mattress Company
903 N. Halstead Street
Chicago, Illinois

Mr. Ralph B. Swearingen
Sealy Mattress Company
200 Cabel Street
Louisville, Kentucky

Gentlemen:

The writer dispatched a telegram to your attention as follows:

> Request meeting on Pearson matter
> Chicago office Friday February 12th
> 9:30 A.M. letter following.

The writer appointed a special committee of seven members, with general counsel, Joseph F. Haas acting as chairman, for the purpose of recommending proposed technique in situations that and/or could arise contrary to the provisions of the Sealy contract identified as Articles III:6 and IV:4.

These proposed techniques are in formulation for submission to the Board of Directors for purpose of specific adoption.

The writer desires to act in advance to Board considerations of these techniques in regard to the difficulties arising out of the expansion of the Pearson chain of stores. The proposed technique will be followed, which generally speaking is as follows:

1. Sealy should sponsor a meeting of the affected Licensees. (The meeting of Friday is for the purpose of fulfilling step one.)

2. At the meeting Sealy and the affected Licensees should endeavor to work toward a satisfactory agreement of mutual handling.
3. If an agreement is reached it should be reduced to simple writing and signed by all affected.
4. If an agreement cannot be reached, the President must rule whether the action complained of as being contrary to the Sealy Contract and compliance date set for the offending Licensee.
5. If either of the Licensees involved are not in agreement with the executive ruling, the matter must then be referred to and reviewed by the Grievance Committee. Said Grievance Committee to render full report and recommendations to the Board of Directors for final decision.

Please advise the writer in care of his Chicago office as to your ability to attend the proposed meeting. At the attendance of the meeting please have in attendance such personnel who can deal with the subject both as to facts and as authority for final agreement.

Very truly yours, Sealy Incorporated, Earl H. Bergmann.

EHB/dg

cc: Mr. J. F. Haas.

[fol. 820E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 430

Dict: 3/13/54.
March 15, 1954.

Mr. C. B. McGillivray
Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

Dear Mac:

You did not get to me the figures on Pearson's relative to the Louisville matter as you promised me this week.

I had a discussion with Mr. R. S. Logan relative to their contract and the possibility of renewal. This took place in our office on Thursday morning, March 11th.

One of the things that he confronted me with was an ad by Pearson in Columbus on March 3rd on a mattress at $36.00. This broke two days after Louisville had distributed thru Buchanan the Sealy colored mailer. I need not tell you what a stink it has caused.

Frankly, Mac, I am getting a little on edge because of the slowness of the Chicago plant in getting this mess cleaned up and I dislike very much being kept in hot water here trying to be a good fellow and work out problems that, if it's necessary for me to go strictly according to the contract, are going to hurt somebody and that somebody is the Chicago plant. I feel that we must have action and I've got to get this thing cleaned up satisfactorily before the Board of Directors meeting even if I have to make a ruling that the contract has been violated. So, govern yourself accordingly and as one salesman to another, get the lead out and get this job behind us.

Regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlc

[fol. 821E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 431

To: Mr. M. A. Kaplan
Sealy Mattress Co.
903 N. Halsted St.
Chicago 22, Illinois

Dict. 2/15/54.
February 16, 1954.

Mr. R. B. Swearingen
Sealy Mattress Co.
1115 Franklin St.
Louisville, Ky.

Gentlemen:

The writer wishes to take this opportunity of complimenting you two gentlemen on the very cordial discussion held with the writer in his office on February 12th on the subject of the Pearson chain of stores and the resultant problem which it has created for the two plants listed above.

This writer believes that certain benefits came from this meeting in ideas and suggestions and possibly, also, we have found common ground upon which we can solve the present difficulty with resultant lack of loss on the part of the Chicago plant and a positive gain on the part of the Louisville plant.

My notations and mental recollections are that we have agreed on the following seven steps.

1. The Chicago plant is to ascertain immediately the number of pieces sold and the dollar and cent volume to Pearson during the year 1953. This record is to show a breakdown by Sealy resale items and also promotions.
2. The Chicago plant is to ascertain the exact amount, if possible, of the pieces sold and the dollar value that actually went into stores located within the Louisville territory. If the exact pieces and dollar volume cannot be ascertained then the Chicago plant is to obtain from Pearson's a percentage of the business that they feel was consumated within those stores.

3. Based upon the total volume of pieces in dollars and cents done by Pearson with the Chicago plant during 1953 the Louisville plant is to be guaranteed at least a 10% greater volume than one-half of the 1953 volume for the first six months of 1954. It is understood that if this program is placed into effect that each six months the figures will be re-analyzed and the totals for the next six months determined.

[fol. 822E] 4. The resale pieces which are to be assigned to the Louisville plant are to be delivered and charged to the Chicago Sealy warehouse and are to be subject to a normal warehouse charge to be agreed upon later.

5. The promotional pieces that are to be assigned to the Louisville plant are to be delivered and charged by Louisville direct to Pearson.

6. Recognizing that to handle the Pearson stores within the Louisville territory as requiring a change in the exclusive dealerships now maintained by Louisville. It is agreed that if this arrangement is placed in effect that Sealy, Incorporated is to send Roger Lawrence to explain the new policy to Louisville's customer, The Buchanan-Jones Company of Columbus, Indiana. This being the largest store involved it was thought well to have someone from the executive office approach the dealer and explain him the reasons for the non-continuance of the exclusive dealerships.

It is agreed that the seventh and final step is that all of this data is to be prepared and submitted to the writer prior to his next visit to the Chicago office on March 8th.

The writer would appreciate having this information forwarded to his Cleveland office as quickly as possible together with your individual reactions to same.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlc

cc: C. B. McGillivray, J. F. Haas.

[fol. 823E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 432

April 2, 1954.

AGREEMENT

Between Sealy Mattress Company of Chicago and Sealy Mattress Company of Louisville, Ky., Re: Pearson's Furniture and Music Company of Indianapolis, Indiana.

1. The Chicago plant has ascertained the number of pieces sold on the dollars and cents volume sold to Pearson's Furniture and Music Company during the year 1953. This record has previously been presented and shows the breakdown of Sealy Resale and Promotional items.

2. The Chicago plant has ascertained the number of pieces sold and the dollar value that actually went into the stores located within the Louisville territory.

3. The dollar volume ascertained for these stores was $7,264.50. The Chicago plant guarantees to the Louisville plant, during the first six months of 1954, that Louisville will receive at least 50% of this volume plus a 10% bonus. It is understood that if this Program is embraced by both factories, that after six months the figures will be re-analyzed and the dollars for the ensuing six months determined.

4. The Resale pieces which are assigned to the Louisville plant are to be delivered and charged to the Chicago Sealy Warehouse and are subject to a nominal Warehouse charge of 5%.

5. The Promotional pieces assigned to the Louisville plant are to be delivered direct to the Pearsons' Warehouse but charged to the Sealy Mattress Company of Chicago, who will bill these goods to the Pearsons' Furniture and Music Company. (If Louisville is unable to build any of the Promotional Effort required, Resale pieces may be substituted in a like dollar amount . . . delivery to be dictated by the Chicago factory).

6. Sealy Incorporated recognizes that if Louisville agrees to handle the Pearsons stores as suggested, it will require a change in the exclusive dealership now maintained by Louisville.

It is agreed that if this arrangement is placed in effect that Sealy Incorporated will cooperate in every way possible to make this change-over as convenient and intelligent as possible and it should lead to ultimate increased business in the Sealy Louisville territory.

Sealy Mattress Company of Louisville, ——, ——.
Sealy Mattress Company of Chicago, ——, ——.

[fol. 824E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 433

Mr. C. B. McGillivray
Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

Dict. 3/21/54.
March 22, 1954.

Dear Mac:

When I wrote you my letter on March 15th and told you to get the lead out and get the controversy between Chicago and Louisville cleaned up I did not realize that it would have such electrifying effect upon you that one day later you would come forth with the data we have been seeking. Congratulations, and I think you have done a very thorough job and for that you should be complimented.

This letter is being written while en route on a plant visit to our Southeastern plant and I do not have the past correspondence and data with me and for that reason I am at a loss to be able to follow all of the points that you have set forth in your letter. Particularly am I referring to the last paragraph on page two relative to the guarantee of 50% plus an allowance of 10%. I do not remember this 10%.

Mac, I'm sending a copy of this letter to Ralph and inasmuch as I will not be back at my Cleveland office until Friday, March 26th, I would like to have you two boys reduce this agreement to writing and have it in my hands by that time so that I can approve same and have it finalized prior to the April meeting of the Board of Directors. Incidentally, I will be in the Chicago office on Monday, March 29th. Any further questions regarding the finalizing of this matter and the reducing of the understanding and its handling could probably be discussed by you and me on that date.

Regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlc
cc: Ralph Swearingen.

[fol. 825E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 434

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

March 25, 1954.

Sealy, Inc.
Mr. E. H. Bergmann
United Office Bldg. Room 418
Cleveland 13, Ohio

Dear Earl:

I have your letter of March 22nd addressed to C. B. McGillivray in which you mention you do not remember the guarantee of 50% plus an allowance of 10%. It was my understanding when we had the meeting in Chicago that we would be assured a guarantee of 10% greater volume in the first six months of 1954 over the first six months in 1953. Also, we were to be given the amount of business in dollars and cents done in 1953 and deliver to Chicago warehouse in Indianapolis and charge this merchandise direct to Chicago with a 5% warehouse charge on all merchandise. However, the 5% charge was to be on resale items. I have received a letter from Mr. McGillivray along with an order for 80 pieces of Posturepedics to be shipped and charged to the Chicago plant but shipped to the Indianapolis warehouse.

His letter mentions that Pearson's wanted us to ship all promotional items to their warehouse but we are to charge the Chicago plant for any promotions instead of direct to Pearsons. This is a change from what we discussed at the meeting.

Last week when Mr. Lawrence visited with Buchanan-Jones in Columbus, he did an excellent job in getting over to Buchanan-Jones the Sealy policy and I think we will be able to continue selling this account although the volume may drop for a few months but I believe we can handle it from this end since Roger did such a fine job. Earl, there is one thing I am puzzled about. When we stopped by the Pearson store in Columbus and had a talk with their store manager, he advised us he sold and sent in his report to Indianapolis stating he disposed of over 400 pieces in 1953. Now the Richmond store is much larger than all the other stores in our territory and I received a report and letter from Mac stating all the stores in our territory only sold a total of 311 pieces. This is a little confusing to me and I would like for you to discuss with Roger our conversation with the Pearson store manager in which he said he sold over 400 pieces. I don't know how this can be checked but I do know we should be given credit for all merchandise sold in our territory.

[fol. 826E] According to this letter and the store manager's conversation, I do not feel this is all the merchandise which was sold in Southern Indiana by Pearsons stores. Of course, the only thing I have to go on is what the store manager in Columbus told Mr. Lawrence and I.

Inasmuch as Mr. R. S. Logan is out of town at this time, we are holding Chicago's order for 80 pieces of Posturepedic until I discuss this with him.

I will advise you at a later date.

Very yours truly, Ralph B. Swearingen, Sales Manager.

S:m

[fol. 827E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 435

April 2, 1954.

Mr. Ralph Swearingen
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Dear Ralph:

On March 16th, we wrote a letter to Mr. Earl Bergmann of Sealy Inc., with a copy to you which gave a complete run down and analysis of the business done with Pearson Furniture and Music Company in Indianapolis, Indiana.

I have not yet heard from you whether this arrangement is now satisfactory and if the Louisville factory of Sealy and the Chicago factory of Sealy are now in perfect agreement.

Mr. Bergmann wrote me on March 22nd asking me to further spell this arrangement out and put it in the form of an agreement and have it in his hands in a finalized form in time for a meeting of the Board of Directors in Miami, Florida.

I further conferred with Mr. Bergmann on Monday, March 29th and enclosed you will find a copy of the Agreement which Mr. Bergmann has asked for. We are sending four copies direct to Mr. Bergmann.

Also, at the suggestion of Mr. Roger Lawrence, who apparently paid you a visit in the Columbus, Indiana territory, I am enclosing a complete list and specifications of the Sealy Promotional Effort which Pearson Furniture and Music Company is featuring or has been offered for first and second 1954 quarter handling.

To date they have purchased and featured five numbers from this Promotional Presentation—as follows: Nylon ADV—Nylon Step-Up #1—Foam-Spun Rubber Topper ADV—Firestone Berkshire Foam Rubber Topper—and Sealy Century—plus a 180 coil rolled edge mattress in 6 oz. ACA cover with Sealy Canary label, which we sell to Pearsons at $14.50 F.O.B. Indianapolis.

The following regular resale Sealy numbers are ap-
[fol. 828E] proved by the Headquarters: $159.50 Posturepedic Foam Rubber Set—$79.50 Posturepedic Innerspring—$149.50 Posture Foam Rubber Set—$69.50 Sealy Rest—$69.50 Lastic Koil—$59.50 Natural Rest.

May I point out to you right here again that the Louisville factory will have to aggressively sell and merchandise at the store level the Richmond, Columbus, Seymour and Franklin stores. Just because the Headquarters approves various Sealy Promotions and regular Sealy goods is no sign that each individual store will feature all these numbers. Each store manager has the privilege to operate his business as an individual unit. As an example, I understand that in Columbus, Indiana, they do not have the Posturepedic Innerspring on the floor at the present time. They have only the Natural Rest and one or two Promotional mattresses.

I am also enclosing copies of two ads from different stores which indicates they will run the same mattress at different prices. Let me point out, if you will examine the specifications, they could have run this as low as $29.95. This indicates how mark-up conscious they are. In other cities where you have other dealers, it will be easy to point out to these other dealers it will be very easy to promote and sell merchandise versus Pearsons when Pearsons is so hungry for mark-up. Pearsons, of course, advertises streamline border mattresses at these prices and almost always steps up to higher priced bedding at the store level.

We are also currently working on a deal with Pearsons on three con.sealy.beds which may or may not have interest to the Louisville factory.

I would appreciate hearing from you at your earliest convenience as to whether or not this entire arrangement and agreement is satisfactory to you and your factory.

"Sin-Sealy" yours, C. B. McGillivray, Sealy Mattress Company.

CEM:H

cc: E. H. Bergmann, M. A. Kaplan, H. M. Wolfe.

[fol. 829E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 436

LOGAN CO.
Since 1876
Louisville 6, Ky.

April 8, 1954.

Mr. Earl Bergmann, President
Sealy, Inc.
Union Office Bldg.
2012 W. 25th St.
Cleveland 13, Ohio

Dear Earl,

Hope you had a nice visit to Florida and got back to Cleveland with a nice sun-tan.

Hate to bring up business so early after your return but we feel that this is very important. You will remember the Buchanan-Jones account at Columbus, Indiana and all the controversy we have had relative to it. This was last discussed with you by Mr. R. S. Logan, our president, when he was in Chicago. Mr. Logan had high hopes that through the visit of Roger Lawrence to Columbus that this whole situation would be straightened out. However, this is not the way that it actually did work out as I received a phone call from Charlie Buchanan last Friday and he requested that I come up to see him. This was done Wednesday, April 7 and after listening to his objections to having Pearsons handle the Sealy line in Columbus, Indiana we are definitely of the same opinion he is that Pearsons is not a desirable account as far as Sealy is concerned—rather undesirable because of their tactics in merchandising.

One thing we should remember is that Buchanan-Jones in 1952 gave Sealy approximately $10,000 worth of business. In 1953 the figure was $20,000—an increase of 100% over the previous year. Also, I would like to state we are not dealing with a man who has made unreasonable requests for advertising allowances or other gratuities. He has been very cooperative and has done a

great deal to make the name "Sealy" synonymous with quality merchandise.

[fol. 830E] You remember that at the time Logan Co. took on the line, the Cincinnati plant had torn down the good name Sealy had in previous years by shipping out inferior merchandise. When we took it over, we assumed and we still do, that it is the policy of Sealy to build up a reputation for quality merchandise. When a store such as Pearsons buys a mattress for $18.75 and sells it for $36.00, the only person who is making any money is Pearsons and all that they are doing is building up the name of Pearsons at the expense of Sealy.

Let's put ourself in the place of Mr. Buchanan, who has done a good job in building up the name of Sealy, having spent quite a few dollars in advertising the Sealy Anniversary at $39.95, and everytime he runs an ad at $39.95, Pearsons repeats their ad for $36.00 for another type mattress. The average consumer, as you and I know, will not take the time to make a comparison of these two ads but will merely assume that Pearsons is underselling Buchanan-Jones by three dollars per mattress. Quality wise, if they would make a comparison, naturally they would buy the $39.95 mattress but those who do not take the time to make the comparison assume that they can get a better buy at Pearsons. On the promotion set-ups forwarded to us by Mr. Kaplan, this mattress was supposed to be advertised for $29.95. Had it been handled in that manner, the average consumer would have assumed, I believe, that it was a different mattress, but where the price advertised was so close to the Anniversary, it is only logical that they would interpret it to be the same mattress. Also, note that this very same ad that ran in Columbus was run in the Indianapolis papers at the same time, the price being $34.00 and also note that the Indianapolis papers are subscribed to by quite a few residents of Columbus, Indiana. We do not believe that this is good merchandising for Sealy to have the same mattress advertised in identical manner at different prices so close geographically.

Mr. Buchanan has run two small ads each week for almost an entire year featuring in these small ads only the Sealy Posturepedic mattress. The Pearson store at

Columbus does not even have a Sealy Posturepedic on their floor and we can see that they are not particularly [fol. 831E] interested in selling any of the resale items as long as they make number on promotional items.

Whereas we formerly felt that Pearsons might be alright for other cities in our territory, we now feel that it is not a good policy for Pearsons to handle any Sealy merchandise for apparently they are only interested in making a tremendous profit for themselves at the expense of the Sealy plants. In order to keep Parsons satisfied we feel the Sealy plants would eventually have to build the type of merchandise formerly built by the Cincinnati plant which in no way even approached quality merchandise and would merely tear down the good name Logan has built up in this territory for Sealy.

When Roger visited Columbus the Pearson store told him they had bought over 400 Sealy pieces in 1953—this figure was again confirmed yesterday. Mr. Kaplan tells you and Logan the total sold to four stores in our territory was some 300 pieces. If Columbus sold 400 pieces it is safe to assume Richmond sold more than this. We cannot have confidence in Mr. Kaplan when such a difference apparently exists between figures. Earl, we do not deal with people we do not have confidence in.

We feel we have spent enough time and money on this controversy and that you should step in now and stop shipment of Sealy merchandise to Pearsons in our territory.

We are sorry that this letter had to be so long but we wanted to give you as many facts on the case as we could. You haven't been down for some time and we would sure welcome the opportunity to discuss this with you in person on your visit to our plant.

Sincerely yours, Robt. L. Howard.

RLH:da

[fol. 832E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 437

Dict. 4/16/54.
April 19, 1954.

Mr. R. L. Howard
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Dear Bob:

This letter acknowledges receipt of your letter of April 8th relative to the Pearson matter.

I have read the letter with considerable interest and there are a number of items in it that possibly should be covered by reply, but the subjects are rather long and I have found it difficult to try to cover matters of contention by the vehicle of the written word. For that reason I will not attempt to cover the various points which you have raised in your letter.

I note according to the next to the last paragraph of your letter that you state you feel that I should step in now and stop shipment of Sealy merchandise to Pearson's in your territory. In connection with this statement, am I to now gather that you do not care to permit the agreement arrived at between Ralph Swearingen, Mr. Kaplan and the writer to be executed?

Incidentally, I would like to also inquire of you as to whether you have delivered the truckload of Posturepedic box springs and mattresses which was forwarded to you by the Chicago plant.

Will you please drop me a note in Cleveland as to these two questions.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB:hlc

Dictated but not read.

[fol. 833E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 438

February 14, 1955.

Mr. C. B. McGillivray
Sealy Mattress Company
930 North Halsted Street
Chicago 22, Illinois

Dear Mac:

I had hoped at the last Market that our conference concerning Pearson's and other accounts would result in a working agreement. Several things seem to have happened which indicate perhaps we should have another meeting concerning this matter in the near future.

While I was in High Point, North Carolina, Paul called to tell me that Wylie had requested shipment of Anniversary mattresses to his Decatur, Indiana store. We refused to do this. I feel that the mattresses which you find there at this time are some which he must have shipped on his own. I expect to be up in his territory this week and will check the matter with him.

Meanwhile, I feel it will be best for all concerned if we cease shipments to Pearson's, since your orders have been cancelled anyway, and sit down around the table and come to a complete understanding before any shipments are made into either territory in the future. I am sending a copy of this letter to Earl Bergmann and I am sure we can make proper arrangements when the time comes.

Sincerely, Sealy Mattress Company, Wm. A. Edie,
Sales Manager.

WAE/ms

[fol. 834E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 439

February 15, 1955.

Mr. Bill Edie
Logan Company
1115 Franklin Street
Louisville, Kentucky

Dear Bill:

In answer to your letter of February 14, I would certainly be agreeable to meeting with you again to iron out, if it needs ironing out, our agreement with you in regards to Pearson's.

However, the fact that we have received a cancellation on Pearson's Anniversary Promotion, in no way affects other merchandise which Pearson's is continuing to purchase week by week, and if you will give me time to spell out what we discussed at the Market, I see no actual reason for a new meeting, and your factory will be ultimately reimbursed as outlined.

We still expect to do a larger volume with Pearson's in 1955 than we did in 1954 regardless of the Anniversary cancellation.

"Sin"-Sealy yours, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:LG

cc: M. A. Kaplan, B. Wolfe, E. Bergmann.

[fol. 835E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 440

Mr. William A. Edie
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

February 16, 1965.

Mr. C. B. McGillvray
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Gentlemen:

The writer notes copies of correspondence sent to his attention relative to shipments from a customer of the Louisville plant being apparently transported by that customer to a store owned by that customer in the Illinois territory assigned to the Chicago plant.

Also apparently the old source of trouble in the form of Pearson again has arisen.

The Pearson matter comes to be perpetual and is commencing to look like the festering sore which in order to finally cure a deep operation had to be performed.

The writer hopes that for once and for all these matters can be amiably disposed of between the two contending plants. If an amiable decision cannot be reached it may be necessary for the national office to perform the deep operation of enforcing the contract in order to solve this problem because frankly it cannot go on festering forever.

The writer as you know is in the process of moving to Chicago and actually from all intents and purposes the major portion of his activities is now centered here. The writer will be in the Chicago office from Monday, March the 7th until Wednesday evening, March the 23rd and suggests to both of the gentlemen here jointly addressed that an appointment be made for the final decision as to this inter-plant controversy.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/js

[fol. 836E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 441

Mr. C. B. McGillvray
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

February 16, 1955.

Mr. William A. Edie
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Gentlemen:

The writer notes copies of correspondence sent to his attention relative to shipments from a customer of the Louisville plant being apparently transported by that customer to a store owned by that customer in the Illinois territory assigned to the Chicago plant.

Also apparently the old source of trouble in the form of Pearson again has arisen.

The Pearson matter seems to be perpetual and is commencing to look like the festering sore which in order to finally cure a deep operation had to be performed.

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Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/js

Offered—Received—Admitted. Not read—Duplicate.

[fol. 837E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 442

February 21, 1955.

Mr. C. B. McGillivray
Sealy Mattress Company
903 North Halsted
Chicago, Illinois

Dear Mac:

In order to keep things on an even keel, I think it would be best that we wait until Earl Bergmann is in Chicago during the month of March to hold our preliminary meeting, so that we might report the results to him. We ask that you do not sell Pearson any additional merchandise until we can talk with you concerning this matter.

Mr. Wells, of the store in Bloomington, was not in when we stopped by but will be back from his trip south very soon.

Sincerely, Sealy Mattress Company, Wm. A. Edie, Sales Manager.

cc: Earl Bergmann, R. L. Howard.

WAE/ms

[fol. 838E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 443

February 24, 1955.

Mr. William A. Edie
Logan Company
1115 Franklin Street
Louisville, Kentucky

Dear Bill:

We are in receipt of your letter of February 21st, and we appreciate that under the terms of your franchise you can ask us not to sell Pearson's any additional merchandise.

However, on the basis of what we discussed verbally at the January Market wherein you agreed and I agreed to continue on the same basis with Pearson's, and on the strength of this agreement we have set up a deal with Pearson's (copies of all this promotional effort have been forwarded to you). We therefore cannot go to Pearson's at this time and abruptly tell them that we cannot supply them inasmuch as they have these numbers on their floor and in their stock, and in addition we have raw materials and cover commitments based on this set up.

Therefore, most naturally we are obligated, certainly for the balance of this selling season, to fulfill our obligation to Pearson's. I am sure you see the position we now find ourselves in.

Therefore, in view of the above I ask that you go along, and we will meet together as you suggested as early in March as possible.

"Sin"-Seally yours, Sealy Mattress Company, C. B. McGillivray.

CBM:LG

cc: Earl Bergmann.

[fol. 839E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 444

262 Granvil Drive
Louisville 18, Ky.
February 27, 1955.

Mr. Earl Bergmann
Room 818
2012 W. 25th Street
Cleveland, Ohio

Dear Earl,

The enclosed letter signed by Arthur Phillips of Pearson's is self explanatory. Please note that the second item offers a $6.00 discount on *any* Sealy Matt or Box-S and $12.00 on a set. This discount is repeated on the coupons. This is also given as a once a year event; so our good customers can wait and buy at Pearsons.

These letters are being distributed in our territory, even where there are no Pearson stores. This one came to the home of our dealer in Shelburn. You should be able to guess what our dealers are saying about "Sealy."

We had been able to sell 33 of our 36 dealers in the Indiana area on the New Posturepedic campaign. The order for the displays is in. Since Posturepedics are now $73.50 at Pearson's, we can expect cancellations.

We had sold Gray in Whiteland 70 pieces of Anniversary—cancelled. We had sold McCowan in Franklin 48 pieces of Anniversary—cancelled. Buzard in Shelburn took delivery but can't sell—he's unhappy. He has 70 pieces, as does Cure and Son, Martinsville, also hurt.

I am having some more of these letters collected, and have asked Leon to get someone to buy in order to give you proof for a suit to protect our fair trade prices.

Leon will spend Monday and Tuesday trying to smooth things out, then will report to me. Needless to say, our

dealers want some assurance that this practice will not continue. MacGillivray points out to me that I agreed at Chicago to let them continue selling Pearson's. I did so on the basis that it would be a legitimate operation.

I must ask that *all* shipments to our territory be stopped and that no such letters be permitted to be distributed either. I would like very much to visit my dealers and brag about Sealy rather than to apologize each time I see them.

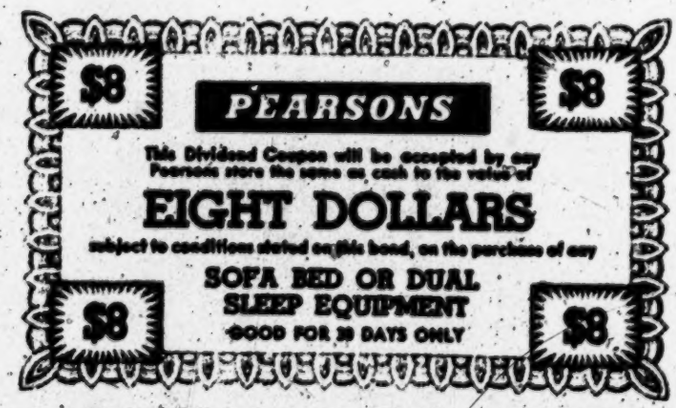
Very truly yours, W. A. Edie.

cc—Prising, Mac Gillivray.

[fol. 840E]


$6
PEARSONS
$6
This Dividend Coupon will be accepted by any Pearsons store the same as cash to the value of
SIX DOLLARS
subject to conditions stated on this bond, on the purchase of any
Sealy or Hirschman Innerspring Mattress or Box Spring
—full or twin size ($12 if you buy a matching pair.)
GOOD FOR 30 DAYS ONLY
$6
$6


$50
PEARSONS
$50
This Dividend Coupon will be accepted by any Pearsons store the same as cash to the value of
FIFTY DOLLARS
subject to conditions stated on this bond, on the purchase of any
3-ROOM OUTFIT
GOOD FOR 30 DAYS ONLY
$50
$50


$8
PEARSONS
$8
This Dividend Coupon will be accepted by any Pearsons store the same as cash to the value of
EIGHT DOLLARS
subject to conditions stated on this bond, on the purchase of any
SOFA BED OR DUAL SLEEP EQUIPMENT
GOOD FOR 30 DAYS ONLY
$8
$8


$10
PEARSONS
$10
This Dividend Coupon will be accepted by any Pearsons store the same as cash to the value of
TEN DOLLARS
subject to conditions stated on this bond, on the purchase of any
5- or 7-Pc. DINETTE SUITE
GOOD FOR 30 DAYS ONLY
$10
$10

Pearson's

Furniture and Music Stores

Trademark Since 1873

ADVERTISING DEPT.

126 N. PENNSYLVANIA STREET

Indianapolis 4, Indiana

Sec. 34.66 P. L. & R.
U. S. POSTAGE
PAID
INDIANAPOLIS, IND.
PERMIT NO. 438

POSTAL PATRON
LOCAL

FORM 3547 REQUESTED

766

[fol. 841E]

Pearson's

Trustworthy Since 1873

STORES LOCATED IN

ANDERSON, ELKHART, LAFAYETTE, MARION, MUNCIE, RICHMOND, TERRE HAUTE, INDIANAPOLIS

518 WABASH AVENUE • TERRE HAUTE, INDIANA

FURNITURE, RADIOS, APPLIANCES, RUGS

Phone CRawford 6031

Dear Friend:

We are enclosing $168 worth of dividends for you, which you may use exactly the same as cash at your nearest Pearson Store.

We feel that you, as a preferred customer, are entitled to an EXTRA SAVING on any purchase ... savings in addition to February sale prices as advertised to the general public.

The enclosed dividends are good for 30 days only for extra savings of---

$25.00 - on any 3 PC. BEDROOM SUITE
$ 6.00 - on any SEALY or HIRSCHMAN INNERSPRING MATTRESS or BOXSPRING full or twin size ($12.00 if you buy a matching pair)
$ 8.00 - on any SOFA BED or DUAL SLEEP EQUIPMENT
$ 3.00 - on any TABLE LAMP priced at $9.95 or over
$10.00 - on any BUNK BED or HOLLYWOOD BED ENSEMBLE
$ 7.00 - on any LOUNGE CHAIR, PLATFORM ROCKER or RECLINER
$10.00 - on any 9 x 12 or larger room size RUG
$25.00 - on any 2 PC. LIVING ROOM SUITE, SOFA BED SUITE or SECTIONAL GROUPING
$10.00 - on any 5 or 7 PC. DINETTE SUITE
$15.00 - on any WASHING MACHINE, GAS or ELECTRIC RANGE
$50.00 - on any 3 ROOM OUTFIT
$ 2.00 - on MISCELLANEOUS PURCHASE

$168 CASH DISCOUNT VOUCHERS
REGISTERED IN YOUR NAME

Select all the home needs now you've been planning to get, and save more than ever. We'll gladly hold any purchase for future delivery if you wish. Use our easy Budget Plan, on approved credit you take up to 78-weeks to pay - with NO DOWN PAYMENT.

Sincerely yours,

PEARSONS FURNITURE & MUSIC STORES

Arthur Phillips

Arthur Phillips
Director of Customer Relations

AP:gt

NOTE: This is a ONCE-A-YEAR event for our customers and their friends... so NOW is your opportunity to select NEW SPRING & SUMMER home needs from NEW complete stocks ... not clearance items or close-outs ... but JUST ARRIVED merchandise.

[fol. 843E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 445

WESTERN UNION

W. P. Marshall, President

3/2/55.

C. B. MAC GILLIVRAY
SEALY MATTRESS CO.
903 N. HALSTEAD ST.
CHICAGO, ILLINOIS

PHONE ME TODAY REGARDING LOUISVILLE LETTER OF FEBRUARY 27TH EXTREMELY IMPORTANT.

EARL BERGMANN
SEALY INC.

[fol. 844E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 446

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

"Sleeping on a Sealy is like Sleeping on a Cloud"

903-933 North Halsted Street
Telephone Michigan 2-2050
Chicago 22, Illinois

Mr. Earl Bergmann
Sealy Incorporated
666 Lake Shore Drive
Chicago, Illinois

March 2, 1955.

Dear Earl:

I note with interest, Mr. W. A. Edie's letter written directly to you, regarding a mailing piece sent out by Pearson's Furniture and Music Stores over the signature of Arthur Phillips, Advertising Manager. Mr. Edie only reports part of the facts, because an examination of the mailing piece shows a master certificate containing a clause, which reads as follows: "No manufacturer's price-fixed, fair-traded goods qualifies." Therefore, the mailing piece which Mr. Edie has called to my attention and yours, which he has in his possession, is incomplete.

Therefore, Mr. Edie's fear that Pearson's is selling

Posturepedics at $73.50 is unfounded. Also, his fear psychology to me, seems more than immature when he states that his dealers cannot sell Anniversary bedding because of this mailing piece. Is it not true that the Anniversary Promotion is a $39.95 Advertised Sealy Promotional Mattresses with an indicated and implied, if not advertised, $59.50 value? This reduction in price of $20 is much greater than Pearson's $6 reduction on Promotional Sealy bedding.

Thirteen of the seventeen Pearson Stores lie in Chicago territory, and we have yet to have an Indiana dealer complain of this mailing piece, which was also mailed into our territory.

In 1954 the Sealy Mattress Company of Chicago did approximately $106,000.00 volume with Pearson's, and Sealy Incorporated in turn, were the recepients of the royalty on this volume. Of this volume, $14,000.00 was turned over for delivery to the Logan Company in Louisville.

This was considerably in excess of the dollar volume consumed by the stores in the Logan Company territory; namely, in Franklin, Indiana—Seymour, Indiana—Columbus, Indiana and Richmond, Indiana. In addition, Sealy Mattress Company of Chicago spent 5% advertising allowance with this customer, and not one red cent of this money was charged to the Logan Company.

[fol. 845E] As you know, Sealy has already lost this year approximately $200,000.00 worth of business with Leath and Company, because of the vagaries of the very nature of the Sealy set-up. It seems to me that if Sealy Incorporated is of the magnitude that I think it is, and if its business is to prosper aggressively and progressively, some of its members will have to re-examine their thinking and change their attitude. I appreciate that this problem most certainly, cannot be solved by anyone in my capacity, but may I point out that this is an ever growing problem and should be arbitrated and successfully solved to the satisfaction of all parties concerned, with Sealy Incorporated being the ultimate beneficiary.

"Sin"-Sealy yours, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:LG

[fol. 846E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 447

April 11, 1955.

Mr. William A. Edie
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

Dear Bill:

Enclosed is a copy of the original agreement, agreed to by Sealy Mattress Company of Louisville, Kentucky and Sealy Mattress Company of Chicago. Also enclosed is a revised agreement which you and I, Bill, agreed to at the January Market.

So far, in 1955 we have not placed any firm orders with Louisville, but we are now getting into the new Posturepedic deal and we expect to order later on enough Posturepedics from Louisville to compensate for Louisville's share of the Pearson business to date this year.

"Sin"-Sealy yours, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:LG

cc: Mr. Earl Bergmann, M. A. Kaplan, E. Siegel.

[fol. 847E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 447-A

January 1, 1955.

AGREEMENT

Between Mattress Company of Chicago and Sealy Mattress Company of Louisville, Ky., Re: Pearsons Furniture and Music Company of Indianapolis, Indiana and Banner-Whitehill and/or any other dealer who requires or uses goods in both Chicago and Louisville Territories.

1. The Chicago plant will ascertain the number of pieces sold to Pearsons Furniture and Music Company and the dollars and cents volume during the year 1955.

2. The Chicago plant will ascertain the number of pieces sold and the dollar value that actually went into the stores located within the Louisville territory. Up to the present time it has been estimated.

3. The Resale pieces which are assigned to the Louisville plant are to be delivered and charged to the Chicago Sealy Warehouse, and are subject to a nominal Warehouse charge of 5%.

4. The Promotional pieces assigned to the Louisville plant are to be delivered direct to the Pearsons' Warehouse but charged to the Sealy Mattress Company of Chicago, who will bill these goods to the Pearsons Furniture and Music Company. (If Louisville is unable to build any of the Pr otional Effort required, Resale pieces may be substituted in a like dollar amount . . . delivery to be dictated by the Chicago Factory).

Anniversary and Golden Sleep are Promotional and if shipped directly to Pearsons' Warehouse, are not subject to a warehouse charge of 5%.

If however, Anniversaries or Golden Sleeps are delivered to the Indianapolis (Sealy) Warehouse, they then are to be handled as regular goods and are subject to a Warehouse charge of 5%.

5. Sealy Incorporated recognizes that if Louisville agrees to handle the Pearsons Stores as suggested, it will require a change in the exclusive dealerships now main-

tained by Louisville. (This was originally suggested in April 1954).

Sealy Mattress Company of Louisville, ——, ——.
Sealy Mattress Company of Chicago, ——, ——.

Offered—Received. Not read.

[fol. 848E] In United States District Court

Government's Exhibit No. 448

Sealy Mattress Company

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

Air Mail

April 29, 1955.

Mr. Earl Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

Bob Howard and I will be in Chicago Wednesday and Thursday, May 11 and 12. We would like very much to discuss with you the Pearson situation.

It might be well for us to talk to Mac on Wednesday morning and see you on Wednesday afternoon, if that is O.K. We would like to bring this business to a head by that time in order that we can appear before the Board of Directors according to Sealy Policy, if necessary, and may so be scheduled for June.

Sincerely, Sealy Mattress Company, Wm. A. Edie, Sales Manager.

WAE/ms

cc: C. B. McGillivray.

[fol. 849E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 449

April 29, 1955.

Mr. C. B. McGillivray, Sales Manager
Sealy Mattress Company
903-933 North Halsted Street
Chicago 22, Illinois

Dear Mac:

As you recall, about two months ago when we discovered Anniversary mattresses and Posturepedic mattresses being billed at discount by Pearson's, we asked that shipments be discontinued to that company. I know that you've told us it's a very big firm and very important to you. But, I must insist that we have been hurt to great extent by their actions and they have not shown good faith in selling Posturepedic at $130.00 per set and selling Anniversaries at $6.00 per mattress discount. These things we have shopped and proven.

We have prepared for Earl Bergmann, and you will receive a copy within a few days also, at the same time he receives his, a chart showing the loss of sales on Anniversary which we had on those dealers bordering Pearson's stores, during the past few months. Inasmuch as our shipments were increased in our other areas, this was a double blow to us. I'm going to Evansville tomorrow and will be back Friday and probably will try to get to Chicago sometime next week and discuss this matter with you and Earl.

Sincerely, Sealy Mattress Company, Wm. A. Edie,
Sales Manager.

cc: Earl Bergmann.

WAE/ms

[fol. 850E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 450

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

June 8, 1955.

Mr. Earl Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

With reference to your Bulletin #88 dated June 6th concerning items to be brought before the board of directors, I am writing to determine whether or not it has been officially decided that our problem with Pearson's stores will be presented to the Board.

You recall that in our conversation about a week ago you mentioned that you had had an informal talk with Maury Kaplan and with McGillivray, at which time they seemed to feel that board action might not be necessary. I have not heard from you since that time, and naturally want to be sure that we can have this problem over, perhaps before market actually begins.

I would appreciate a letter from you concerning the status of this problem so that I might report to Mr. Logan.

Sincerely, Sealy Mattress Company, Wm. A. Edie,
Sales Manager.

WAE/ms

[fol. 851E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 451

Mr. E. C. Logan
Sealy Mattress Company
1115 Franklin Street
Louisville, Kentucky

August 3, 1955.

Dear Mr. Logan

The writer has been away from his desk for three weeks and for that reason has been delayed in acknowledging receipt of a copy of your letter of July 18th to Mr. Kaplan of the Chicago plant enclosing a copy of the proposed agreement relative to the Pearson stores.

The writer has a deep interest in this problem and its solution because it strikes at the very fundamentals of our peculiar organization. As our plants expand to the point where they sell Sealy merchandise in every nook and cranny of their assigned territories and acceptance is gained on a nationwide basis, similar situations such as this are going to become the rule rather than the exception. It is because of this fact that the writer has tried to exercise broad patience in the attempt to find an agreeable solution to the Pearson problem. I have felt that if this problem could be solved on an amiable basis it could well be the format for the solution of similar problems yet to materialize.

Last night at my home I gave long and serious thought to this problem and the proposed agreement, and while I have come to the conclusion that the original suggestion made by the Chicago plant was complicated and involved confidence and faith in a number of items that made it rather difficult to execute, I have come to the conclusion that the proposed agreement which you have submitted is likewise unwieldy and requires complex data which in my opinion is cumbersome and in the final analysis will not produce information other than that which can be obtained by direct statement of the parties involved. I well realize that this necessitates faith in the party who must furnish the information but after all we must assume the honesty of our business associates until they are proven otherwise.

[fol. 852E] Struggling with the hope of arriving at some

kind of a format we can use in other cases, as previously pointed out, it seems to me that this entire problem could be resolved on a much more simple basis along these lines:

(a) For Pearson to furnish a statement of the total of Sealy purchases for the stores within the Louisville territory.

(b) If the actual Sealy purchases for the stores within the Louisville territory are unknown, then a statement of the total Sealy purchases for the entire chain should be given.

(c) If the Sealy purchases for the stores within the Louisville territory are unknown and a statement of total Sealy purchases is made, a further statement should be made by Pearson indicating the percentage of bedding, regardless of brand, sold by the stores in the Louisville territory to the total bedding, regardless of brand, sold by the entire chain. This percentage times the total Sealy business indicated in (b), above, would indicate the amount against which should be applied the commission referred to in paragraph 3 of the proposed agreement.

In passing I want to say that I am inclined to feel that 17% commission is rather on the high side and one which I think I would have difficulty in trying to work with other Sealy plants. It occurs to me that the commission to the salesman in this particular type of a handling and the 9% profit since there is no necessity for any facilities, are high. In the past on a number of occasions I have personally worked this type of compensation with jobbers and distributors and the figure generally used has been either 14% or 15%.

Time being the essence of this problem so far as Pearson is concerned, and being desirous of avoiding possible loss of a sizeable volume of business for the Chicago plant, as well as Sealy, Inc., I have urged Mr. Kaplan to go ahead with the agreement with the thought that experience will teach us whether the arrangement can be continued or whether the parties involved will feel they cannot continue. Should that occur this letter may serve some useful purpose at that time.

I have not had the pleasure of meeting you personally but I knew R. S. quite well and he and I got along together splendidly. I hope sometime soon to have the opportunity of meeting you personally.

[fol. 853E] Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

cc: M. A. Kaplan.

[fol. 854E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 452

January 11, 1956.

Mr. Ray Garland
c/o Pearsons
3318 N. Lincoln Avenue
Chicago 13, Illinois

Dear Mr. Garland:

Reference is made to the Agreement we have with Sealy of Chicago in which we gave our permission for them to ship to Pearson stores.

In that Agreement it was stated that each year by the 10th of January Pearsons would furnish Logan Co. and also Sealy of Chicago a percentage figure which would represent the amount of Bedding business the four Pearsons stores in our territory represented of the total Pearson business received by Sealy of Chicago, during 1955.

We are sure that you have been very busy at the Market and more than likely you have overlooked having your Accounting Dept furnish us this figure.

Would you please have this figure furnished us as soon as possible so that we may set our records up for the coming year?

Thanks for your usual splendid cooperation.

Sincerely yours, Robt. L. Howard, Controller.

RLH:da

[fol. 855E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 453

Law Offices

WOODWARD, HOBSON & FULTON
Suite 1805-26 Kentucky Home Life Building
Telephone Wabash 3321
Louisville 2, Kentucky

October 17, 1956.

Mr. E. H. Bergmann, President
Sealy, Inc.
666 North Lake Shore Drive
Chicago 11, Illinois

Dear Mr. Bergmann:

We are attorneys for Sealy Mattress Co., of Louisville, Kentucky, who have consulted us concerning the repeated and still continuing violations of their Licensing Agreement with you, due to the shipment into their territory by Sealy Mattress Co., of Chicago, a licensee of yours. As we understand it, this is caused primarily by shipments from Sealy Mattress Co., of Chicago to four Pearson's Stores in cities located within our client's Indiana territory.

As you know, this infringement arose some time ago, and in accordance with your bulletin of May 28, 1954, subject, "Programs of Procedure Approved and Adopted by the Board of Directors," our client attempted to work out a solution to this problem, with your advice, by agreement with Sealy Mattress Co., of Chicago, that would enable Sealy Mattress Co., of Chicago to sell Pearson's Stores and providing that our client would be reimbursed for those sales on an agreed basis.

This attempt failed completely, as you know, because Sealy Mattress Co., of Chicago did not reimburse our client properly and continued to sell to Pearson after it

became manifest, by Pearson's course of conduct, that Pearson would not live up to the pricing agreements and the advertising agreements specified by you and agreed to by Sealy Mattress Co., of Chicago.

We have seen what is apparently a copy of Mr. Morris Kaplan's letter of July 29, 1956 to your Company stating that his Company, that is Sealy Mattress Co., of Chicago, would no longer sell Pearson's in our Client's territory. This letter, of course, was written after our client's letter to Mr. Kaplan of June 15, 1956, cancelling the proposed agreement of July 18, 1955 between Sealy Mattress Co., of Chicago, and our client, for the reasons stated above in this letter.

[fol. 856E] Unfortunately, a check of the four Pearson's Stores, as of October 4, 1956, in our client's territory reveals a substantial inventory of Sealy Mattresses manufactured by Sealy Mattress Co., of Chicago. Our client has done everything possible to work out some proper solution. However, as you can appreciate, and as you have been advised by our client, the improper advertising and pricing of Sealy Mattresses by Pearson's Stores, not only has caused our client financial loss on the sales by Pearson's Stores, but has also greatly damaged our client's sales in its territory to other customers.

This letter, therefore, is a demand that you immediately enforce your legal rights against Sealy Mattress Co., of Chicago, in the following respects:

1. That you collect, under paragraph V:4 of the licensing agreement, $10.00 for each Sealy product sold by Sealy Mattress Co., of Chicago, within our client's territory since June 15, 1956.
2. That you immediately prohibit and prevent Sealy Mattress Co., of Chicago from selling any Sealy product within our client's territory, under paragraph IV:4(a) of the licensing agreement.

Our client has, for many years now, complied satisfactorily with the terms of its licensing agreement from your Company. It has every intention of continuing to do so, and by the same token is entitled to have its rights,

under the licensing agreement from you, fulfilled both by you and by those from whom you can legally require protection for our client.

We have been instructed because of the seriousness of the problem, not only to write this letter to you, but to advise you that if you do not immediately protect our client's rights, we will prepare and file a suit both for liquidated damages under paragraph III:7, and for an injunction requiring you to enforce your licensing agreement with Sealy Mattress Co., of Chicago and for damages to our trade by the violations of our territory agreement both as to pricing and advertising.

[fol. 857E] We will be glad to hear from you at your first opportunity.

Yours very truly, Woodward, Hobson & Fulton.
By /S/ Fielden Woodward.

FW:emc.

cc—Mr. Robert Howard, Sealy Mattress Co., Louisville, Kentucky.

[fol. 858E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 454

October 29, 1956.

Mr. M. A. Kaplan
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Dear Morry:

Enclosed is a photostatic copy of a letter received from Woodward, Hobson, & Fulton who apparently are attorneys for the Logan Company in Louisville, Kentucky.

This matter comes as a complete surprise and frankly is very disturbing, not only because of the apparent non-finalizing of your statement made during the past June Market, that the Chicago plant would discontinue selling the Pearson group to eliminate any further controversy with our Louisville plant. I'm also disturbed because I don't like the legalistic approach thrown into this subject by the Louisville plant without a full review with me. I think this approach is entirely out of order within the family and it should not be resorted to until all parties fully realize and acknowledge that the matter can only be finalized in that manner.

Our last Sealy meeting should be concluded by noon on November 17th. I am going to ask that your Sealy representatives of Louisville, J. F. Haas, general counsel for Sealy, Incorporated and myself have a table conference on this matter at 2:00 P.M. on Saturday, November 17th in the Sealy Lounge.

I would appreciate knowing if you will be able to attend this conference.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/sm

cc—Mr. J. F. Haas, Mr. Robert Howard.

[fol. 859E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 455

SEALY MATTRESS COMPANY
Factories in Principal Cities
Makers of the Famous Sealy Posturepedic Mattress
200 Cabel Street
Louisville 6, Kentucky
Phone WA 1366

November 8, 1956.

Mr. E. H. Bergmann, President
Sealy, Incorporated
666 N. Lake Shore Drive
Chicago 6, Illinois

Dear Earl:

Following our telephone conversation yesterday, I learned that our attorney Mr. Fielden Woodward, was out of the city and would not return until Monday, November 12. I want to talk to him before giving a final answer to your suggestion of another meeting in Chicago. Meanwhile we would like to add some details that may help you to understand our position.

You said yesterday that we had by-passed you in placing this matter in the hands of our attorney. I quote from my letter to you of 6/27/56:

"In Edie's presence last week, Mr. Kaplan instructed McGilvray to stop all shipments to Pearson immediately in accordance with our request. We will appreciate it very much Earl, if you will follow up on this with Kaplan and write us a letter as quickly as possible, assuring us that all ties with Pearson have been cut and that they will positively not have the Enchanted Nights promotion or anything else from here on."

The above letter lays the problem in your lap. I don't see how we could have done it more definitely. Your letter to me of July 19 indicated that the problem was

solved. Instead, we found we were on the same old merry-go-around we have been riding for the past five years.

Mr. Woodward's letter to you of Oct. 17 says that a check of the four Pearson stores in our territory as of Oct. 4 revealed a substantial inventory of Sealy mattresses. This was first reported by our salesman and on Oct. 10 was checked by Mr. Edie in person at all four stores. This was all *new* Sealy merchandise. Each store [fol. 860E] was featuring it over Simmons and Serta and was devoting 50 to 60% of its space to it.

R. S. Logan says that a couple of years ago he made at least one trip to Chicago for the specific purpose of discussing with you the Pearson situation. He says he left the matter in your hands and that you promised him you would take care of it.

We are not interested in any further meetings with Kaplan. (It has become quite obvious that we cannot place any reliance on his word). Our contract is with you, and if another meeting is held, it should be between you with your attorney and us with our attorney.

Just before our agreement of July 18, 1955 was consumated with Chicago Sealy, we had been given to understand that the Pearson account (all stores) was a most valuable one, with sales in the neighborhood of $250,000 annually. The amount Kaplan paid us under the agreement was based on a percentage of total Pearson sales. For the eleven month period that the agreement was in effect, the amount we received was based on annual total Pearson sales of about $80,000. You can draw your own conclusions.

Frankly we do not see any reason at all for another meeting at this late date. All you have to do is take the two steps named on page 2 of Mr. Woodward's letter of 10/17/56.

Earl, we don't relish lawsuits any more than you do. I see no sensible reason why there should have to be one in this case.

Yours truly, E. C. Logan, President.

b

cc: Woodward, Hobson & Fulton.

[fol. 861E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 456

March 12, 1953.

Mr. M. L. Forbes
Sealy Mattress Company
1115 Franklin Street
Louisville 6, Kentucky

Dear Harry:

Our new franchise holder, the Slumber Products Corporation, which replaced the U. S. Bedding Company in the Memphis area calls to our attention that you are selling Sealy mattresses to the Dempsey Appliance and Furniture Store in Greenville, Kentucky. As I understand it, Greenville is located in Muhlenberg County, which according to our records is in the Memphis area.

Slumber Products Corporation would like to serve all of the territory in their contract, and I would appreciate it if you will drop me a line regarding Muhlenberg County.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:hlt

cc: M. L. Haas.

[fol. 862E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 457

April 14, 1953.

To: Mr. E. H. Bergmann

Dear Earl:

Harry Forbes was in the office the other day, and we discussed the problem of his selling in Greenville, Kentucky. Harry realizes that the agreement he made with Louis Haas would not be binding on the new owners in Memphis. However, he is very anxious to retain this account in Greenville as well as to try to obtain additional counties in Kentucky.

Actually, he should have an additional row of counties that are adjacent to his territory that are now under the Memphis contract. He can service these counties much better than the Memphis plant can as he is considerably closer. I told Harry that there was no possible way of placing these counties under his contract unless the new owners at Memphis would be agreeable in giving them up.

We both realize that Memphis would not be in a mood to make territory concessions until they have had time to make a complete survey of the area they have under franchise. I think Harry is going to write to Memphis to see if he can't continue to sell the dealer in Greenville.

I personally think that the new owners in Memphis will give a much better coverage of their territory than the U. S. Bedding Company did. It will take a while for them to get started, but I anticipate the new Memphis plant to be one of our best licensees within the very near future.

Very truly yours, J. R. Lawrence,

JRL:hlt

[fol. 863E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 458

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Chicago 22, Illinois
Telephone Michigan 2-2050
903-933 North Halsted Street

October 14, 1953.

Mr. Earl H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland 13, Ohio

Dear Earl:

A little over a year ago, the Chicago Sealy factory had a very successful Posturepedic Road Show at Kay Furniture Company in Moline, Illinois. At the same time the Golden Sleep Promotion of 1952 was sold, which was a very successful Promotion.

Unfortunately, the customer trucked some of the merchandise into Davenport, Iowa, which is in the Des Moines territory of Sealy; and the dealer also took it upon himself to run a Golden Sleep ad in Davenport.

This was done without our permission and, of course, in a gentlemanly fashion, we were criticised by Mr. Ryden of the Sealy Des Moines factory (and rightly so) because we were in violation of our Sealy contract.

Subsequently, through our salesman, Mr. Mandelbaum, I made a date for the 1953 January Market to meet with Mr. Stoker (now deceased), his two sons, Mandy, the Sales Manager of the Des Moines factory and the writer. I attempted to make an arrangement for Moline to buy the Anniversary Promotion from the Sealy factory in Chicago and to buy an additional trailerload from the Des Moines factory for the Davenport store; using our price structure,

promotional ideas and advertising proposition. This did not turn out successfully as the dealer was unable to take in this quantity of merchandise from both Chicago and Des Moines.

Consequently, we lost the Anniversary Promotion entirely and lost our business in Moline on regular merchandise.

We envisioned we would try again at the June Market with the Golden Sleep but here again we were unsuccessful.

I noticed, however, in the enclosed tear sheet from the Daily Dispatch of Moline, Illinois, Kay Furniture adver- [fol. 864E] tised the Golden Sleep Mattress in Davenport and Moline which now indicates that the Des Moines factory has shipped goods into *our* territory and they are *in the exact position of violation* for which they so gentlemanly criticised us.

Again, this is typical of an attempt to secure business for the Sealy Mattress Company on an inter-plant basis. Certainly, from our point of view, it is entirely unsuccessful when we lose the volume from the account and the sales of regular merchandise.

The customer, of course, cannot understand any of this confusion; and just has a sincere desire to get the benefit of merchandising Sealy for both his stores.

"Sin-Sealy" yours, C. B. McGillivray, Sales Manager, Sealy Mattress Company.

CBMcG:H

cc: I. W. Mandelbaum, H. N. Ryden, M. A. Kaplan.

[fol. 865E] IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 459

December 24, 1953.

Mr. Ernest M. Wuliger
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Dear Ernest:

Enclosed is a copy of a letter to the boys in Pittsburgh which when you read it will tell you why my face is red.

I am in receipt of a letter from Bob Culp dated December 21st in which he advised that they had their Mr. Russell go to Sharon and investigate this matter and his findings were that this mattress was shipped by the Cleveland plant to the Niles store who in turn shipped it to Sharon.

In addition to the observations that I note to the Pittsburgh plant I am going to add to them so far as the Cleveland plant is concerned the observation that Robins should be aprised by letter not to send Sealy mattresses from the Niles store to Sharon because of Sharon lying with the jurisdiction of the Pittsburgh territory.

I am also enclosing a copy of the letter of apology to Bob and Hymie.

Would you be good enough to send me a copy of your letter to Robins asking them to cooperate with you in maintaining our intra-plant relations.

Very truly yours, Sealy Incorporated, Earl H. Bergmann.

EHB/dg

Encls.

[fol. 866E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 460

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

1900 Lowe Street—Pittsburgh 20, Pennsylvania
Phone Walnut 2-1000

January 11, 1954.

Air Mail—Special Delivery

Mr. E. H. Bergmann
% Sealy Inc.
2012 West 25th Street
Room 1418 United Office Bldg.
Cleveland 13, Ohio

Dear Earl:

Enclosed you will find an ad that was run by the Robins store in Sharon under date of January 7, 1954, and not so long ago I sent you another ad that was run by Robins featuring Sealy mattresses as you will note by the enclosed ad.

When I wrote to you previously I explained that we have in particular a very good account by the name of Bolotin's who have cooperated with us 100% and the ad that I enclosed was sent to me by them, and since we do not have any working agreement with Robins' outfit we found upon investigation that this merchandise was being shipped into Sharon from their Niles store.

We also find that these mattresses have Pennsylvania Law Stamps on them which makes me wonder how this could be possible unless they received them from the Cleveland plant.

This matter has reached the serious state and Sealy Inc. should immediately take steps to stop our Cleveland plant

from selling merchandise to Robins if they persist in shipping this merchandise into our territory.

Will you please give this matter your immediate attention and advise me as soon as possible as to what steps you intend to take to correct this situation.

Yours truly, Sealy Mattress Company, R. G. Culp.

RGC/csl

Encl.

cc: Bolotin's

[fol. 867E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 461

Sealy Mattress Company
of Pittsburgh
1900 Lowe Street
Pittsburgh 20, Pa.

January 12, 1954.

Gentlemen:

Your letter of January the 11th enclosing a second ad run by Robins store in Sharon on January 7, 1954 distresses me very much.

When this matter was first called to my attention a letter was dispatched to the Cleveland plant on December the 24th, copy of which is attached hereto.

On December the 26th I received a letter from the Cleveland plant saying that they would immediately take this matter up with the salesman involved and have the matter immediately handled.

I personally spoke to Ernest Wuliger of the Cleveland plant relative to this matter and he stated that owing to the market and the salesman who calls on Robins in Niles being on vacation that they did not have an opportunity of clearing the matter up with Robins.

Mr. Wuliger informs me that he will take care of the matter personally and that no later than next week the salesman who calls on Robins will arrange with Robins that no further shipment of this nature will be made into Sharon. [fol. 468E] Incidentally, I discussed the matter of the Pennsylvania labels with Ernest Wuliger and he declares emphatically that they have not attached Pennsylvania registry labels to Sealy merchandise. Apparently, Robins procured these stamps elsewhere. If I remember correctly anyone can buy them.

I am quite sure that this matter will be quickly handled to the satisfaction of all interested parties.

Very truly yours, Sealy Incorporated, Earl H. Bergmann.

EHB/dg

Encl.

CC: Mr. E. M. Wuliger.

[fol. 869E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 461-A

Mr. Max Lewis
Sealy Mattress Co.
West Railway & Gould
Paterson, N.J.

Dict. 5/14/54.
May 18, 1954.

Dear Max:

I received a very disturbing telephone call this morning from the Brooklyn plant.

They tell me that in their presence, they called your plant and that you agreed to ship 20 twin size Posturepedic outfits to the Millers Decorator Co. at Grand Concourse, Bronx, N.Y.

This man had been receiving Sealy merchandise and being pressed about where he could get it, he indicated that it was possible to buy it from you; and actually telephoned your plant in their presence and had the assurance that it would be delivered.

He first said that you wanted him to come to your plant and pick it up, but upon the Brooklyn insistence, he told you that he could not do that and for you to deliver it. It is my understanding that you told him that you would let him know the next day. The story that comes to me is that the next day, you told him that you would deliver the 20 sets, but that it would be billed to him through a New Jersey dealer.

Max, I need not call your attention to the fact that your contract says that you cannot sell Sealy merchandise to anyone knowingly that it is going to be transported out of your territory for resale. This is a very serious acquisition.

It is my understanding that Mr. Kligman is going to call upon you today and see if he cannot get the matter straightened out once and for all. In view of the seriousness of this matter, it will be necessary for me to hear from you as to a full report, so that I may be guided as to whether or not there was a violation of contract.

Will you please advise me fully?

Very truly yours, E. H. Bergmann.

EHB/rl

[fol. 870E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 461-B

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

196 West Railway Avenue—Paterson, New Jersey
Phones AR 4-7793-7794

May 20, 1954.

Mr. E. H. Bergmann
Sealy, Incorporated
2012 West 25th Street
United Office Building, Room 48
Cleveland 13, Ohio

Dear Mr. Bergmann:

We acknowledge receipt of your letter of May 18, 1954, and wish to point out to you the facts regarding the matter outlined by you.

On or about May 13th, we received a telephone inquiry from an individual who refused to divulge his name and who wanted to purchase twenty twin size Posturepedic outfits. He claimed he was a friend of one of our salesmen and our immediate reply to him was we do not ship any Sealy merchandise into New York and that he should contact the New York factory. In any event, we told him that we would discuss the matter with our salesman.

The next day we were informed by our salesman that the individual who called had been previously employed by the Newark Furniture Warehouse of Newark, New Jersey whom we are suing under the Fair Trade Practice Act for cutting prices on Sealy merchandise.

As stated before we would not and will not ship any Sealy merchandise into New York and we emphatically made this clear to this individual who made the inquiry.

We were surprised the next day when Mr. Kligman, Senior of Sealy of Brooklyn stated in our office that the telephone inquiry was made from his plant and we pointed

out to him that, although the call was received no order was made out nor was any dealings made with this individual.

[fol. 871E] It is amazing how these facts and this situation can be so distorted.

If you will carefully review the foregoing, you will close the matter in your files inasmuch as same has no merit or basis.

Very truly yours, Sealy Mattress Company, M. Lewis.

ML:sm

P.S.

It might interest you to know that Mr. Kligman left this office quite satisfied with the explanation given to him by us and the fact is that we have never heard of the Millers Decorator Company until receipt of your letter.

[fol. 872E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 462

July 19, 1954.

Mr. Marcus Haas
Sealy Mattress Company
P. O. Box 2847
Memphis, Tennessee

Dear Marcus:

Mac telephoned you last Monday, July 12th, with reference to the confirmation regarding Leath shipments in your territory but thus far has not heard from you.

I just cannot understand this kind of handling, regardless of the situation in Memphis.

Very truly yours, Morris A. Kaplan, Sealy Mattress Company.

MAK:H

cc: E. H. Bergmann, C. B. McGillivray.

[fol. 873E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 463

July 21, 1954.

Sealy Mattress Company
903 N. Halsted St.
Chicago, Illinois

Attn: Mr. M. A. Kaplan

Dear Morrie:

We acknowledge your letter of July 19 as well as copy of the letter you wrote to Harry Ryden, further, we enjoyed talking to you today.

If we played a part in your losing the Leath order, it was certainly unintentional and we are exceedingly regretful. Mr. McGillivray called me on Monday, July 12, stating that you had obtained the order from Leath and you wished us to make shipment to the store in Springfield. He further stated that he was forwarding the order to us. We immediately began attempts to reach our Illinois salesman by long distance because we knew that he was working toward Springfield last week. We located and told him of the situation and asked him to make his investigations in Springfield and to advise us as quickly as possible. We heard from Bill Ahern the latter part of the week and upon discussions in our office, it was agreed that we were in a position to handle the Leath order for you.

Proceeding under the assumption that we would get the order from you, we did not notify you but were going to confirm the order upon its receipt. I was out of town the balance of last week, however, left all information in writing with Mrs. Embree, awaiting the order. Upon my return I dictated a letter to Mac, telling him that we had not received the order and that because we had to ship in pool cars via St. Louis we would need the order promptly in order to make delivery for you at the proper time.

If you will query Mac, you will find that we told Mac

that we were not in the habit of confining Golden Sleep to any one dealer in any town much less in a town the size of Springfield but we felt in fairness to our salesman, he should be contacted before an order was accepted from a concern outside of his territory for shipment into his territory. In this, we feel sure you will agree.

[fol. 874E] It would seem to me that it would be wise prior to the Anniversary promotion or any future promotion to follow the line of your suggestion to get clearance from any other plants before you negotiate with Leath or any similar concern.

With best regards as always, I am

Sincerely yours, M. L. Hass, Sales Director, Sealy Company of the Southeast.

MLH/c

cc: Mr. E. H. Bergmann, Cleveland, Ohio.

[fol. 875E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 464

July 26, 1954.

Mr. H. N. Ryden
Sealy Mattress Company
301-325 Southwest 8th Street
Des Moines 8, Iowa

Dear Harry:

In reading your letter of July 20th, at this point I feel like a great deal of discussion has been carried on over something which is now dead, and things that are dead ought to be allowed to remain dead and buried.

I can't, however, pass this by without clarifying one thing. In your letter to us of July 8th, in reading it Mac finds that there were some conflicting thoughts. In order to clarify it, he called you but you were not in, and then he talked to Harry Fouts who suggested that he take the matter up with you, and on the following Monday you would call Mac, which you did.

You gave Mac the impression that you wanted to go along, but you would like to ship the goods to the Leath store in your area, but that you would have to clear it with your salesman who was out of town. We therefore, did not forward the order to you since our orders were blank purchase orders that were given to us by Leath & Company, and we did not want to be in a position of typing an order and mailing that to you, as well as to Leath, only to find that your salesman might have objections to Leath having the mattress in a town in your territory. That, of course, would have been very embarrasing, to say the least.

Because of the necessity of your contacting your salesman, and our inability to tell Leath that they could have the Golden Sleep in a store in your territory, and, coincidentally, our inability to tell them that they could have it in Springfield, Illinois either, as the result of the necessity of Memphis having to clear with their own salesman—we

were unable to confirm the deal with Leath & Company. They could not wait because they were behind in their schedule of planning and advertising already, and the cancellation followed.

[fol. 876E] Another thing I want to straighten out is that there never was any idea in our mind that we wanted to ship to Leath & Company in your territory. Mac went along apparently on an old basis, where it was their impression that you had asked us to ship to Leath in your territory previously. We had no desire to ship for anybody in territories outside of our own. This is our normal reaction, and, at the present time, when we are so terribly behind in our orders with a big backlog, we certainly are not looking for more responsibility than we are able to say grace over now.

As indicated heretofore, however, the matter is now dead.

Since the cancellation, and apparently as a result of the request on the part of some Leath store managers to have Golden Sleep around the Chicago area, where both Golden Sleep and Posturepedic are in the middle of a hard-advertising program, they are going to take a carload of Golden Sleeps and Posturepedics into their central warehouse, which is in Rockford, Illinois. The plan is that for only those stores who request a display of Golden Sleep, as developed by the Sealy salesman, who call on these stores and work these out with the floor managers, will there be any Golden Sleep and Posturepedic shown in the immediate future.

We have also discussed with them the advisability of the Anniversary for next year. This, to clarify the situation, is based upon each factory supplying the stores in the area they service. Orders would come, to start with at least, directly to us in Chicago and we in turn would redistribute them to the factories until such time as we could work something out with Leath & Company where they would mail orders directly to those plants involved. Perhaps that could be done in the beginning.

We should, therefore, ask permission for everyone to solicit their business for the January Anniversary, and whatever additional resale goods we might be able to sell them. They have expressed a real interest in the resale

line of sleepers but it appears that it is a little too late for them to take that on this year.

We would like, therefore, to have your permission to solicit them for Sealy resale goods or promotional effort established on a national basis for 1955. I am sending copy of this letter to Memphis and Detroit and respectfully request their permission also.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:nmk

cc: P. D. Brown—Detroit, Marcus Haas—Memphis— E. H. Bergmann.

[fol. 877E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 465

August 3, 1954.

Mr. Morris A. Kaplan
Sealy Mattress Company
903-933 North Halsted Street
Chicago 22, Illinois

Dear Morry:

Replying to that part of your letter of July 26th, pertaining to plans for soliciting business from the Leath stores.

Because of certain arrangements already made in Dubuque, it is impossible for us to solicit business in that city from the Leath store.

We kindly request that you notify the Leath organization that there is to be no delivery of Sealy products from their central warehouse in Rockford, Illinois, or for that matter, any inter-store exchange of merchandise into the Iowa territory.

In regard to Davenport, we have a different approach, as to the future solicitation. Whatever Sealy products the Leath Company purchases, we will gladly supply the Davenport store. As in past years, orders for the Davenport store are to be mailed to us here at Des Moines, for manufacturing and shipping. But, again, in the case of Davenport, the same notification should go to the Leath organization that no goods be supplied from the central warehouse at Rockford, and no inter-store exchange of Sealy merchandise into the Iowa territory.

Mr. Fouts is fully acquainted with the details of our previous correspondence regarding this matter.

Yours very truly, Sealy Mattress Company, Vice President.

HNRyden:nw

CC: E. H. Bergmann, P. D. Brown, Marcus Haas.

[fol. 878E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 466

August 10, 1954.

To: Mr. M. A. Kaplan—Chicago
Mr. Harry Ryden—Des Moines
Mr. Marcus Haas—Memphis
Mr. P. D. Brown—Detroit

Gentlemen:

The writer has accumulated a file of some five or six letters during the past two weeks between the above plants on the subject of the Leath Stores and their apparent desire to buy Sealy merchandise in all of the stores.

The writer's memory going back to the war days was that this group had some 20 odd or possibly 30 stores spread across several of the Sealy territories. If I remember correctly, we successfully sold them large quantities of the Air Woven Tuftless mattress at that time.

The writer is not familiar with the location of these stores and this letter is directed to the licensees whose names have appeared in the above mentioned correspondence asking that each licensee furnish to the writer a list of the Leath Stores in his respective territories. I would like to get this information in order to evaluate the location of the stores and what is at stake individually and collectively in the selling of this group of stores.

It seems that it is a shame that for some reason business to the extent of a thousand pieces of goods must be sacrificed. It is hard for me to make 2 and 2 come out to 4 in a case like this, unless there is a unbearable damage on the part of someone that more than offsets the total benefit due to the group, and of course Sealy, Inc.

In accordance with the handling of the Board of Directors of a program to work out a procedure of selling multiple store co-ownerships which embrace several Sealy

plants, and as enumerated in bulletin SP-18 issued on May 28th, 1954, the writer is going to procure what data he needs relative to the group in question, and in accordance with item No. 3 of the program A as promulgated, will set a date for a meeting of the affected licensees. This date will try to be worked out in conjunction with the coming meeting of the Board of Directors on September 20th through the 22nd.

[fol. 879E] Will each of the plants addressed by this joint letter please furnish immediately the information requested as to the number of stores of this group in each territory and any data relative to the reasons why certain stores cannot be sold.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 880E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 467

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

301-325 Southwest 8th Street
Telephone 3-5165
Des Moines 8, Iowa

August 12, 1954.

Mr. Earl H. Bergmann
Sealy, Inc.
2012 W. 25th Street
Cleveland 13, Ohio

Dear Earl:

We are in receipt of the copy of your letter of August 10th, addressed to four different Sealy plants, asking for information regarding the Leath Stores. Here is the information regarding our area:

Dubuque—To sell the Leath Store in Dubuque would cause unbearable damage. We have exclusive arrangements with a dealer who gives Sealy exclusive.

Davenport—Willing and happy to sell Leath. The store manager is not permitted to buy. Chicago Leath office could send us orders in the same manner as they did during the war when they bought the Tuftless Air Woven mattress.

Yours truly, Sealy Mattress Company, Vice President.

HNRyden:nw

[fol. 881E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 468

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

903-933 North Halsted Street
Telephone MIchigan 2-2050
Chicago 22, Illinois

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th Street
Cleveland, Ohio

August 13th, 1954.

Dear Earl:

Following is the list of Leath & Company Stores.

Chicago Territory:	Des Moines Territory:	Detroit Territory:
Anderson, Indiana	Davenport, Iowa	Flint, Michigan
Appleton, Wisconsin	Dubuque, Iowa	Port Huron, Mich.
Aurora, Illinois		
Beloit, Wisconsin		
Belvidere, Illinois		
Bloomington, Illinois		
Danville, Illinois		
Decatur, Illinois		
Eau Claire, Wisconsin		
Elgin, Illinois		
Fond du Lac, Wisconsin		
Freeport, Illinois		
Galesburg, Illinois		
Green Bay, Wisconsin		
Janesville, Wisconsin		
Joliet, Illinois		
Kalamazoo, Michigan		
Kokomo, Indiana		
LaCrosse, Wisconsin		
Madison, Wisconsin		
Marion, Indiana		
Marshfield, Wisconsin		
Moline, Illinois		
Muncie, Indiana		
Oshkosh, Wisconsin		
Rockford, Illinois		
Saginaw, Michigan		
Springfield, Illinois		
Sterling, Illinois		
Wausau, Wisconsin		
Warehouse: Rockford, Illinois		

Sincerely yours, C. B. McGillivray, Sealy Mattress Company.

CBM:H

[fol. 882E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 469

Dict. 8/14/54.
August 17, 1954.

Mr. Harry Ryden
Sealy Mattress Co.
301-325 S. W. 8th St.
Des Moines 8, Iowa

Dear Harry:

Thanks for your leter of August 12th relative to information concerning the Leath Stores in your territory. Your letter is the first one to come in and I suppose within the next day or two. I will have the other data and then we will see what we can finally work out, so that we don't pass up possible business from 30 stores because of maybe not shipping to an isolated store here and there. Surely something can be done without harm to all.

I note something odd to me in your letter relative to Dubuque. You speak of an exclusive dealer. I am not familiar with Dubuque, and so I look up the population and I note that it is an excess of 70,000, and brother you must have some dealer to give him exclusive on Sealy for a city that size.

Harry, I am wondering if you would be good enough, or willing, to send me a total resume in dollars and cents of the kind of business that you get from this dealer, say for the past 3 or 4 years. I am sure that this information would have to be considered in an overall discussion such as I propose.

Regards.

Yours very truly, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 883E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 470

SEALY COMPANY OF THE SOUTHEAST

Sleeping on a Sealy is Like Sleeping on a Cloud

P. O. Box—354 S Parkway West
Memphis 2, Tennessee

August 19,1954.

Sealy, Inc.
2012 W. 25th Street
Cleveland, Ohio

Attn: Mr. E. H. Bergmann

Dear Earl:

Thank you for copy of your letter of August 10. The only Leath store in our territory is in Springfield, Illinois.

Best regards, I am

Yours sincerely, M. L. Haas, Sales Director, Sealy Company of the Southeast.

MLH/c

[fol. 884E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 471

Dict. 8/14/54
August 17, 1954.

Mr. Ralph Swearingen
Sealy Mattress Co.
1115 Franklin St.
Louisville, Ky.

Dear Ralph;

As I promised you, I immediately called Mr. McGillivray of the Chicago plant relative to the Sealy merchandise which appeared in the window of Taft & Baker in Rushville, Indiana.

Mr. McGillivray knew nothing of it, and as a matter of fact stated at the time I spoke to him that he did not know as to whether they even sold these people in Elwood. He stated that he would immediately investigate and advise me.

After I had reached my home last night, a telephone call came through from Mr. McGillivray and he stated that they did not sell Taft and Baker and that therefore the merchandise could not be so far as he could see Chicago made good. It is my understanding that he conveyed this information to you.

Will you please dispatch one of your men immediately to Rushville and find out which Sealy plant furnished the merchandise, so that we may trace the matter further.

The writer will be in his Cleveland office until the evening of Wednesday the 18th and on the 19th and 20th will be in the national office at Chicago.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

cc: Mr. G. V. McGillivray-Chicago.

[fol. 885E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 472

Dict. 9/1/54.
September 7, 1954.

Mr. Ralph Swearingen
Sealy Mattress Co.
1115 Franklin St.
Louisville, Ky.

Dear Ralph:

What happened to the matter of Sealy merchandise appearing in Rushville, Indiana?

I have not had a reply to my letter of August 17th and I would like to clear my files of this matter before the Board meeting.

Will you please advise me as to what you found relative to the source of the merchandise which appeared in the window at Rushville?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 886E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 473

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street—Louisville 6, Kentucky—Phone WA 1366

Sept. 9, 1954.
Lou, 13, Ky.

Dear Ralph:

In regards to the Sealy merchandise displayed in Tafts Furniture Store, Rushville, Ind.

The window full as related to you by Mr. Hendren, consisted of 2 posturepedic combinations, I personally checked these items as to where they were manufactured, three pieces was manufactured by Sealy of Louisville, and one piece by Sealy of Chicago.

I talked with several people connected with Taft Furniture Co. naturally they were very secretive concerning where the mattresses came from. I did learn from a truck driver that this merchandise was picked up in Indianapolis, (definite place unknown.) Insofar as this merchandise was labeled from both Louisville and Chicago, I am of the opinion the Louisville items was from the load we supplied to Sealy Indianapolis Warehouse, for the Pearson Stores, now since we have received many guarantee cards from all over the northern part of Indiana, this would indicate mixing of our bedding and Chicago bedding once reaching the warehouse, therefore Mr. Taft could be getting his supply from most any northern source.

I think this is being done without the knowledge of any of our Chicago Friends.

Will appreciate any help in correcting this nuisance, insofar as it could eventually cost us the Hendren & Foster

accounts ($16,000.00 this year) At present the situation is well in hand. I am enclosing a copy of newspaper ad. Mr. Hendren is content to let it ride until we can definitely locate the leak.

Best regards, Leon.

P.S. I was in Columbus today, the feelings are still somewhat strained with Buchanan-Jones, however I now feel they will heal sufficiently to permit our again selling them in quantity. Banner & Whitehill of Indianapolis, will open a new store in Columbus before Christmas, suggest we think about this and work with Chicago before hand to avoid a similar Pearson incident.

[fol. 887E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 474

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street—Louisville 6, Kentucky—Phone Wa 1366

September 13, 1954.

Sealy Incorporated
2012 W. 25th. Street
Cleveland, Ohio

Attn: E. H. Bergmann

Dear Earl:

In answer to your letter of September 7, 1954, regarding Taft Furniture Store, Rushville, Indiana.

I am enclosing a report from Leon Prising, after he had personally checked the items in the Taft Furniture Store, and I think this report will give us something to go on. Also, I am enclosing an ad from the Rushville paper which you will note is not our mat, but is called a Sealy Posturepedic.

Earl, If you will remember several months ago we sent about eighty or ninety pieces of Posturepedics to the Indianapolis warehouse and according to Leon's report, he thinks possibly they have gotten Posturepedics either from the Indianapolis warehouse or from some of the northern stores with the Louisville label. He states in his report they have both the Louisville and Chicago labels. However, I do not think this will continue because as I understand it was done more for spite, and unless they are making some money on the bedding, I do not think they will take up space in their store without making a profit. However, I feel this matter should be checked with the Indianapolis warehouse and if this is going on it should be corrected.

You will note at the bottom of Leon's report that Banner

& Whitehill of Indianapolis are planning on opening their store in Columbus before Christmas. Before the store is opened I would like it clear with Chicago that we are going to service this account from the Louisville plant. This understanding with Chicago would prevent any trouble from starting, such as the trouble we now have with the Pearson store.

Best regards,

Ralph B. Swearingen, Sales Manager.

S;s

[fol. 888E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 475

Dict. 9/25/54.
September 27, 1954.

Mr. Ralph B. Swearingen
Sealy Mattress Co.
1115 Franklin Street
Louisville, Ky.

Dear Ralph:

Your letter of September 13th arrived in Cleveland after I had left for Chicago on the night of the 14th for the purpose of preparing for the Board Meeting of September 20th and 21st. Hence the delay in acknowledgement of receipt and reply.

I am going to write to Mr. McGillivray of the Chicago plant and will send to him a copy of your letter as well as the report from Leon.

I agree with Leon that this nuisance should be eliminated and I will do everything that I possibly can to accomplish it.

I also fully agree with Leon's observation relative to the Banner & Whitehill Co. of Indianapolis, and I shall so write to the Chicago plant.

I shall advise you of any further developments.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 889E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 476

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland
Gilmor 5-7010

August 24, 1954.

Mr. Earl Bergmann
Sealy, Incorporated
2012 West 25th Street
Cleveland 13, Ohio

Dear Earl:

Enclosed please find copy of letter written to Gene Kligman about the discount operation of "Masters" in Washington, D.C. This is hurting and hurting plenty. We need immediate action to stop same. They must be selling upwards of 100 pieces per week in Washington, D. C. I am spending my good money to put over Sealy in Washington and Brooklyn is getting the benefits. I feel I should be entitled to a tremendous payment from Brooklyn on this operation. I warned Brooklyn months ago, and they told me they could control this outfit from shipping to their Washington store. That is a good joke. That is the reason Masters opened a Washington store—to serve as a mail order house in a territory where there is no fair-trade law.

Earl, besides this particular happening, this discount operation is getting worse and worse, and I would like to see a discussion on same on the agenda of our September Board meetings. We are going to have to establish some sort of national policy, or quite a few, like myself, are going to get hurt by happenings such as above.

I am also enclosing an ad run by Wanamakers, Phila-

delphia on a Sealy Sleeper with $79.50 Posturepedic mattress at $199.00. Our minimum is $229.00. Three stores in my territory have thrown this ad in my face and are threatening to do the same thing. We cannot uphold our National policies if our neighbors do not do the same. This, of course, is another problem for the Board. I know myself, just how hard it is to keep the stores in line with their advertising. They tell you one thing and when the ad appears, it is something else, and it is too late to stop it. The whole problem is so complex that you can go crazy, but there must be a solution.

[fol. 890E] I want to call your attention again to our problem with Fisher and the way he is selling Fisher Lounges. They are selling our styles, in our resale covers, as a bed made by Sealy, (with a Fisher health tag, of course), and selling them $20.00 or more below our prices and these beds are in turn being sold by the stores as a Sealy bed. The average layman, of course, goes for this because he can save money. This, I know, is the same as your Ohio mattress problem, and we for one, want to see something definite done to stop this. We have discussed this at some lengths, and I know the problem is involved, but it must be stopped, if Sealy is to remain where it is and continue to grow.

I do not envy you the problems involved in this letter, but I do have the utmost confidence in you to handle same.

Please let me hear from you as soon as possible.

Kindest regards.

Sincerely yours, Sealy Mattress Company, J. R. Rudick.

jrr;rs

Enclosures—2

[fol. 891E] IN UNITED STATES DISTRICT COURT

August 24, 1954.

Mr. Eugene Kligman
Sealy Mattress Company
460 Morgan Avenue
Brooklyn 22, New York

Dear Gene:

Just a few months ago, I had occassion to write you and then later to talk with you, about the problem of the Masters Chain, selling Sealy merchandise, especially the Posturepedic, in Washington, D. C. at a discount.

You advised me at that time that you were selling them in New York, but had a deal with them that they understood they could not ship it to Washington, D. C. I told you I knew for a fact that they were shipping Sealy Posturepedics to Washington by their own trucks from New York. You asked for proof, and if I got proof, you would stop supplying them at once.

I now have conclusive proof. We have in our factory a Posturepedic mattress made by you that we purchased for $54.50 from Masters in Washington, D. C. We also have their bill for same. They are selling them openly and have completely upset our whole business structure in Washington.

I expect immediate action from you on same. I am sending Earl Bergmann a copy of this letter to place same in Sealy's hands.

I want action and want it immediately on above.

Yours very truly, Sealy Mattress Company, J. R. Rudick

jrr;rs

CC: Earl Bergmann—Cleveland, Ohio.

[fol. 892E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 477

August 26, 1954.

Mr. Joseph Rudick
Sealy Mattress Co.
2307 Hollins St.
Baltimore Md.

Dear Joe:

This letter acknowledges receipt of your letter of August 24th together with two enclosures.

I shall await reply from Eugene Kligman as to the Mastered operation. Inasmuch as you told him that you were sending me a copy on the subject, I shall await his reply before writing to him.

I note the ad run by Wannamaker's and I shall dispatch a letter to Irv Fisher today about it.

A bulletin is being dictated today by me covering the general subject of Con. sealy. beds, which when you receive it, I believe will be self-explanatory.

I note your thoughts of discussing the discount operation during the coming Board meeting, and if we have time I think that is a good suggestion. If time permits, I will put it on the Agenda.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

[fol. 893E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 478

September 15, 1954.

Sealy of the Southwest
P. O. Box 7097 Sylvania Station
Fort Worth, Texas

Attn: Mr. Louis G. Haas

Dear Louis:

Thank you for your letter of September 8.

If the Arcade Furniture Company of Fort Smith, Arkansas is sending Sealy goods of our manufacture to their McAlester, Oklahoma store, it is certainly without our knowledge or approval.

Bob Lawrence will be in Fort Smith next week and will personally handle the matter. As soon as we have a report from Bob, you will be notified officially by letter.

Best regards as always, I am

Yours sincerely, M. L. Haas, Sales Director, Sealy Company of the Southeast.

MLH/c

cc: Mr. Earl Bergmann, Cleveland, Ohio, Mr. Bob Lawrence.

[fol. 894E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 479

Dict. 9/25/54.
September 27, 1954.

Mr. C. McGillivray
Sealy Mattress Co.
903 North Halsted St.
Chicago, Illinois

Dear Mac:

Upon my return to Cleveland from the Board Meeting, I found a reply to the Taft Furniture Store incident in Rushville, Indiana from Ralph Swearingen of Louisville.

I think the easiest way to get the full thinking of the report from Leon on the Taft matter together with Ralph's letter to me, is to send to you copies of same which are enclosed herewith.

I agree fully with Leon's contention that the warehouse in Indianapolis should be checked as to whether the goods is coming out of there, and I believe that we ought to have the warehouse state their position in writing so that there could be no question about it.

If the warehouse is clear, then it is obvious that this merchandise is being obtained from a store which could be properly termed a feeder. I agree fully with Leon and Ralph's observation that this nuisance should be discontinued before it does some harm to the Louisville account of Hendren & Foster. I am depending upon you to advise me as to what steps you are going to take to check into and control, and stop this shifting of goods across the line of demarcation.

Also, I am thoroughly in agreement with the last sentence in Leon's report to Ralph relative to Banner & Whitehill of Indianapolis, and their opening of a new store in Columbus before Christmas. Under no circumstances is there to be any goods shipped by Banner & Whitehill

to their Columbus store. These matters apparently are for all purposes best handled by saying no right at the beginning, and since we are having so much trouble, I am going to take the position in the case of Banner & Whitehill of saying that if they will not agree to the non-shipment of their goods to their Columbus store, that they are not to be sold Sealy merchandise in Indianapolis either. I hate to take this stand, but it looks to me from all the [fol. 895E] trouble we are having, that while it is hard to say in the beginning, a lot of time and irritation is avoided by a firm stand right from the beginning.

Mac, will you please drop me a line on these matters?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rl

Attach.-2

cc: Mr. Ralph Swearingen-Louisville, Ky.

[fol. 896E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 480

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

1900 Lowe Street—Pittsburgh 20, Pennsylvania
Phone Walnut 2-1000

Mr. E. H. Bergmann
% Sealy Inc.
2012 W. 25th Street
Room 1418-United Office Bldg.
Cleveland, 13, Ohio

December 28, 1954.

Dear Earl:

Sometime early in November the Ohio Mattress Co. delivered to the Brown Furniture Co. of Salem, Ohio (Pittsburgh Territory) fourteen (14) pieces of Harvest Special bedding, with Sealy labels attached. This was called to the attention of Ernest Wuliger, who subsequently informed the writer, that this allegation was investigated by an Ohio Mattress Co. salesman, and that this salesman removed the Sealy labels and replaced these with Ohio Mattress labels On The Dealer's Premises. This implies that there is no difference between Sealy merchandise and Ohio Mattress merchandise aside from the label.

The removal of the Sealy labels in no wise lessens the damage we suffered both with the Brown Furniture Co., and with another good customer of ours, in the same city, who assumed that this merchandise had been *sold* by *us* to his competitor, and is so provoked by the whole affair that it is questionable if we can retain his business.

In lieu of all this, we respectfully request that you convey this complaint through the proper channels, and that penalties be invoked against the Ohio Mattress Co.

Yours very truly, Sealy Mattress Company, H. F. Kaufman.

HFK/pw

CC: Mr. Wuliger—

[fol. 897E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 481

SEALY MATTRESS COMPANY

2841 E. 37th St. Cleveland 15, Ohio
Telephone VUlcan 3-0444

December 30, 1954.

Sealy Mattress Co.
1900 Lowe St.
Pittsburgh 20, Pa.

Attention—H. F. Kaufman

Gentlemen:

Enclosed herewith is our check for $140.00.

This is in full settlement of your claim, as outlined in your December 27th letter to us and December 28th letter to Mr. E. Bergmann.

Very truly yours, Sealy Mattress Company, Ernest M. Wuliger.

K-enc

cc—EHB

[fol. 898E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 483

January 7, 1955.

Mr. E. M. Wuliger
Sealy Mattress Co.
2841 E. 37th St.
Cleveland, Ohio

Dear Ernest:

I acknowledge receipt of my copy of your letter of December 30th to Mr. Kaufman enclosing a check for $140.00.

I am also in receipt of a letter from Mr. Kaufman under date of January 4th in which he refers to the matter and has forwarded to me your check in the amount of $140.00.

It is my feeling that this is a matter that should be referred to legal counsel for final decision before anything officially is done relative to it by the national office.

It is my plan to discuss this matter with Mr. Haas on Monday, January 10th and I hope at that time to be able to give you a final handling by the national office.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rb

[fol. 899E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 484

January 7, 1954.

Mr. H. F. Kaufman
Lowe & McKnight Sts.
Sealy Mattress Co.
Pittsburgh, Pa.

Dear Hymie:

This letter acknowledges receipt of your letter of January 4th together with the check in the amount of $140.00 which you received from the Ohio Mattress Company as a payment of penalty on the part of the Cleveland plant for the shipment of merchandise into your exclusive Sealy territory.

It is my feeling that this matter should be referred to legal counsel for his opinion before the national office makes any official handling of the controversy.

It is my plan to call Mr. Haas on Monday, January 10th and discuss the entire problem with him before I do anything in the way of official recognition or handling on the part of the national office.

I shall keep you informed as to the counsel's opinion and the finalized handling on the part of the national office.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rb

[fol. 900E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 485

January 10, 1955.

Dear Ernest:

I have discussed with Joseph Haas the correspondence between the Ohio Mattress Company and Sealy Mattress Company of Pittsburgh relative to the shipment of merchandise bearing a Sealy label from the Ohio plant into the Pittsburgh territory.

As you know, under the terms of your contract, such a shipment is in violation of the provision which specifically prohibits any manufacturer or licensee from selling, delivering, or shipping any Sealy product outside of his own exclusive territory. You know of course that this is not the first instance where complaints of this nature have been made against the Ohio Licensee.

We recognize that after the matter was brought up by the Pittsburgh Licensee you tried to correct the situation by removing the labels. I need hardly point out to you, however, that the evil which this particular provision of the contract was inserted to prevent had already occurred. In other words, the damage was done.

Under the contract between Sealy and Pittsburgh, Pittsburgh has the right to demand payment from Sealy of $10.00 for each mattress sold in its territory provided Sealy collects this sum from the offending Licensee. In turn, your contract provides that you will pay to Sealy *upon demand* $10.00 for each mattress sold outside of your exclusive territory.

While I think that under both the letter and the spirit of both contracts we should ask for the payment of $10.00 per mattress, and in turn pay that over to Pittsburgh, in the general interest of harmony I have suggested to Pittsburgh that this not be insisted upon. They have indicated that they are willing to abide by my suggestion.

I want you to understand, however, that I am taking this

position not because I feel that there was any excuse whatsoever for a plain violation of the contract, but only because I feel that it is far more important to emphasize the seriousness of the offense as it affects the entire Sealy relationship than it would be to insist upon the payment of a small amount of money, which would be more irritating than compensatory; and secondly because no one should feel that such a serious violation can be expiated by the payment of $10.00 for each article shipped.

Violations of a contract have a cumulative effect and are not to be considered as acts which can be paid for and forgotten.

I hope that there will be no recurrence of this violation, which I think from Sealy's standpoint is most serious.

Very truly yours, ——, ——.

[Offered—Received—Not read.]

[fol. 901E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 486

SEALY MATTRESS COMPANY

2841 E. 37th St. Cleveland 15, Ohio
Telephone VUlcan 3-0444

January 13, 1955.

Mr. E. H. Bergmann
Sealy Incorporated
2012 West 25th St.
United Office Bldg.
Room 418
Cleveland 13, Ohio

Dear Earl:

This will acknowledge your January 7th letter relative to the Pittsburgh matter.

I just want to say that I don't think the $140.00 fine is in order. I think that Frenchy is acting a little childish, but of course that is his prerogative. Whatever way you adjust the matter is satisfactory to me. If you care to discuss it further, I will be happy to do so.

Very truly yours, The Ohio Mattress Company,
Ernest M. Wuliger.

EMW:HT

[fol. 902E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 487

Dict. 1/12/55.
January 14, 1955.

Mr. Ernest M. Wuliger
Sealy Mattress Co.
2841 East 37th St.
Cleveland, Ohio

Dear Ernest:

I have discussed with Jos. Haas the correspondence between the Ohio Mattress Co. and the Sealy Mattress Company of Pittsburgh relative to the shipment of merchandise bearing a Sealy label from the Ohio Mattress Co. into the Pittsburgh exclusive Sealy territory.

As you know, under the terms of your contract, such shipments are in violation of the provision which specifically prohibits any manufacturer or licensee from selling, delivering or shipping any Sealy product outside of his own exclusive territory. If my memory serves me correctly, this is not the first instance where complaints of this nature have been made against the Ohio Mattress Co.

This office recognizes that after the matter was brought up by the Pittsburgh licensee that the Ohio Mattress Co. tried to correct the situation by removing the labels. However, the error which this particular provision of the contract was inserted to prevent had already occurred. In other words, the damage was already done.

Under the contract of Sealy, Inc. and its Pittsburgh licensee, the Pittsburgh plant has the right to demand payment from Sealy, Inc. of $10 for each mattress sold in its territory provided that Sealy, Inc. collects this sum from the offending licensee. In turn, your contract provides that you will pay to Sealy, Inc. *upon demand* $10 for each mattress sold outside of your exclusive Sealy territory.

While I think that under both the letter and the spirit

of both contracts, Sealy, Inc. should ask for the payment of $10 per mattress, and in turn pay that sum over to the Pittsburgh licensee, in the general interest of harmony, I have suggested to the Pittsburgh licensee that this not be insisted upon. They indicated that they are willing to abide by my suggestion.

Please understand, however, that I am taking this position not because I feel that there was any genuine excuse whatsoever for the violation of the contract in this manner, but only because I feel that is far more important to emphasize the seriousness of the mistake as it affects the entire Sealy relationship than it would be to insist upon a payment of [fol. 903E] a small amount of money, which would be more irritating than compensatory; and secondly because no one should feel that such a violation can be expiated by the payment of $10 for each article shipped.

The sad truth is that any violations of a contract have a cumulative effect and I hope that there will be no reoccurrence of this type of violation on the part of the Ohio Mattress Company.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/rb

cc: Mr. H. F. Kaufmann—Pittsburgh, Mr. Jos. F. Haas—Atlanta, Ga.

[fol. 904E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 488

THE OHIO MATTRESS COMPANY

Bedding Manufacturers Since 1907

2841 East 37th Street—Cleveland 15, Ohio—VUlcan 3-0444

January 17, 1955.

Sealy Incorporated
2012 West 25th Street
United Office Bldg.
Room 418
Cleveland 13, Ohio

Attention: Mr. E. H. Bergmann

Dear Earl:

I have read your January 14th letter with further reference to the Pittsburgh matter.

I think that Sealy Incorporated will have to look at situations of this kind somewhat the same as the government does in the enforcement of its laws; namely, much more importance should be placed on the intent behind the act rather than on the action itself.

I can understand the reason for the Pittsburgh plant being irritated at what happened; however I think that, if their business with this customer was on a sound basis to begin with, a brief explanation of what happened should suffice to clear up the incident. I think that if the tables were reversed, I could satisfactorily explain the matter without losing the customer, unless I was about to lose the customer anyway.

I felt that Pittsburgh's demands for restitution were contractually correct but, as I said before, childish. If they felt that the shipment was a deliberate violation, then they should definitely have demanded the payment and should not now give up their rights to the payment. However, I

am quite sure that they did not think this was the case and merely demanded the payment to "teach us a lesson".

We watch this situation very closely and have a pretty good set of controls to avoid this type of incident; however as long as human beings are human beings, some mistakes are bound to occur.

Kind regards.

Very truly yours, The Ohio Mattress Company,
Ernest M. Wuliger.

EMW:HT

CC: Mr. H. F. Kaufmann, Pittsburgh, Mr. Jos. F. Haas, Atlanta, Ga.

[fol. 905E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 489

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

1900 Lowe Street—Pittsburgh 20, Pennsylvania
Phone WAlnut 2-1000

February 17, 1955.

Mr. E. H. Bergmann
Sealy, Inc.
2012 W. 25th Street
Cleveland 13, Ohio

Dear Earl:

I have been waiting until you got back from your Southern vacation and your subsequent return from Chicago, before commenting on your January 14th letter to Ernest Wuliger.

I was frankly astonished by the fifth paragraph of this letter. In my brief discussion with you, I don't recall giving you any indication that we would forego the $10.00 per mattress penalty, and we certainly do insist upon this penalty being invoked.

You may recall that a similar incident occurred at Spear & Company in Pittsburgh in the summer of 1953, wherein the Ohio Mattress Company delivered to Spears, some 60 odd pieces with Sealy labels. In my discussion with Ernie regarding this violation, at the directors meeting in Pittsburgh, September 1953, I told him that we would overlook the Spear violation, but on any subsequent violations would demand our full contractual rights. I am sure that Ernie understood at that time that I meant what I said.

We have no intention or desire to "teach a lesson" to the Ohio Mattress Company. I am sure that the sum of $140.00 means very little to them. This sum, I am sure,

is even less than the cost of a dinner meeting for May Stern's floor salesmen at the Park Schenley restaurant. We have merely decided that a line must be drawn and that we cannot overlook any violations at all, whether deliberate or unintentional.

[fol. 906E] We are looking to Sealy Incorporated to invoke penalties against the Ohio Mattress Company for the 14 pieces shipped in our territory.

I would appreciate an acknowledgement of this letter.

Yours very truly, Sealy Mattress Company, H. F. Kaufman.

HFK/pw

cc: Ernest Wuliger.

[fol. 907E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 490

March 11, 1955.

Mr. E. M. Wuliger
Sealy Mattress Company
2841 East 37th St.
Cleveland, Ohio

Dear Ernest:

In accordance with the letter of Feb. 17, 1955, from the Sealy Mattress Company of Pittsburgh, a copy of which was sent to you, it becomes quite apparent that it is necessary for Sealy, Inc., to accede to the contractural rights of the Pittsburgh plant because of the incident which occurred at the Brown Furniture Company of Salem, Ohio. This incident was fully outlined in the letter of Dec. 28, 1954, addressed to the National Office, and copy of which was directed to your attention.

We are returning to you your check No. A14036 in the amount of $140.00 which was issued to the Sealy Mattress Company at Pittsburgh.

Since the contract states specifically that the collection of the penalty is to be assessed by the National Office and in turn paid to the licensee who has demanded payment it is my suggestion that you re-issue the check to Sealy, Inc., and upon receipt of same we will pay a like amount to the Sealy Mattress Company of Pittsburgh.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

[fol. 908E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 491

MESSAGE

To: Bertha
From: E.H.B.
Date: March 17, 1955

Use this as support for your disbursement voucher for check in the amount of $140.00 payable to the Sealy Mattress Company of Pittsburgh.

Reply —
Date of Reply —

[fol. 909E] From the desk of—

Att:

Kay K. Kaplan.

Mr: Bergmann (replacing our check to Sealy of Pgh.)

K.

[fol. 910E] In United States District Court

Government's Exhibit No. 492

March 17, 1955.

Mr. H. F. Kaufman
Sealy Mattress Company
1900 Lowe Street
Pittsburgh 20, Pa.

Dear Hymie:

In accordance with your letter of February 17th we have requested the Ohio Mattress Company of Cleveland to pay to Sealy, Inc., the amount of $140.00 covering the contractural rights of the Sealy Mattress Company of Pittsburgh because of the incident which occurred at the Brown Furniture Company of Salem, Ohio.

Please be advised that we have received payment from the Ohio Mattress Company of the said $140.00 and Sealy, Inc., check for like amount is enclosed herewith.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

encl.

cc: E. M. Wuliger.

[fol. 911E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 493

February 10, 1955.

Mr. Bill Edie
Logan Company
1115 Franklin Street
Louisville, Kentucky

Dear Bill:

We have a customer, Wylie's Furniture Company, Decatur, Indiana, who has refused to buy the Anniversary Promotion from our factory because he has purchased the promotion from the Logan Company as he has another store which lies in your territory.

This has been checked and the store in our territory has the Sealy Anniversary mattress and boxspring in his window carrying your law label.

This, of course, is an obvious violation and I wish you would get this stopped immediately and confirm.

The dealer is apparently trucking your merchandise from the store in your territory into our territory.

"Sin-Sealy" yours, Sealy Mattress Company, C. B. McGillivray, Sales Manager.

CBM:LG

cc: M. Kaplan, E. H. Bergmann, B. Klein.

[fol. 912E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 494

SEALY MATTRESS COMPANY
2841 E. 37th St. Cleveland 15, Ohio
Telephone VUlcan 3-0444

June 20, 1955.

Mr. E. H. Bergmann
Sealy, Inc.
666 Lake Shore Blvd.
Chicago, Illinois

Dear Mr. Bergmann:

We have received instructions from the Myer Frank Furniture Co. of Warren, Ohio that they have given up their Warren warehouse and are receiving merchandise only at their warehouse in Farrell, Pa., in which city they also have a retail store.

Myer Frank Co. has also assured us that merchandise shipped to their warehouse in Farrell, Pa. will be used only on sales made in their Warren, Ohio store.

This store has made these arrangements with all its suppliers and we see no alternative but to comply with the instructions given, at the same time notifying you so that you are apprised of the situation and our intention to comply with Sealy's policy covering this kind of situation.

Kindest personal regards,

Sincerely yours, Sealy Mattress Company, Roy B. Unger, Sales Manager.

RBU:jsr

cc: E. M. Wuliger, A. J. Gregor.

Sealy Factories in 31 Cities.

Makers of the Famous Sealy Posturepedic Mattress.

[fol. 913E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 495

July 6, 1955.

Mr. Roy Unger
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Mr. J. DiSalvo
Sealy Mattress Company
Lowe & McKnight Streets
Pittsburgh, Pennsylvania

Gentlemen:

This is merely a check up and follow through on the letter written by Roy Unger to the writer on June 20 relative to the peculiar situation of the Myer Frank Furniture Company of Warren, Ohio and Farrell, Pennsylvania.

You gentlement recall that together with Mr. Gregor and Mr. Kaufman we discussed this particular matter during the past market.

It was the consensus of the discussion that Mr. Kaufman and Mr. DiSalvo were to discuss this matter with the Farrell store and advise both the Cleveland plant and this office as to how they felt it would be possible to work out an arrangement which would be agreeable to all.

Please advise me as soon as you gentlemen have come to a definite decision.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/jg

[fol. 914E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 496

August 9, 1955.

Mr. Roy Unger
Sealy Mattress Company
2841 East 37th Street
Cleveland, Ohio

Mr. J. DiSalvo
Sealy Mattress Company
Lowe & McKnight Streets
Pittsburgh, Pennsylvania

Gentlemen:

This letter refers to my joint letter to you gentlemen on July 6th relative to the situation concerning the Myer Frank Furniture Company of Warren, Ohio and Farrell, Pensylvania.

I have not heard from either of you therefore I am inclined to believe that no decision has been reached but I would appreciate having a word from one or both of you so that I might close my files.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:ef

[fol. 915E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 497

SEALY COMPANY OF THE SOUTHEAST

Sleeping on a Sealy is like Sleeping on a Cloud

P. O. Box 2847—354 S. Parkway, West
Memphis 2, Tennessee

July 25, 1955.

Sealy, Inc.
666 Lake Shore Dr.
Chicago, Illinois

Attn: Mr. E. H. Bergmann

Dear Mr. Bergmann:

Our St. Louis salesman has advised that the Harrison Wholesale Company, whose main office is in Chicago, but who has a branch in St. Louis located at Natural Bridge & Florissant have Sealy mattresses in their catalogue.

These mattresses have alternate names from the regular resale line, but are definitely advertised and billed as Sealy goods. We would like to know if this is not a violation of the territory policy, if these orders are to be filled by the Chicago plant. We would appreciate hearing from you at your earliest convenience.

Sincerely yours, D. B. Embree, Sales Department,
Sealy Company of the Southeast.

DBE/ra

Manufacturers of Bedding and Convertible Sleeping Equipment.

[fol. 916E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 498

August 3, 1955.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mrs. Embree:

The writer has been away from the office for some time and, therefore, the slight delay in reply to your letter of July 25 concerning the Harrison Wholesale Company operating out of St. Louis.

This writer has known of the Chicago plant selling Sealy merchandise to the Harrison Wholesale Company for several years, but to the best of his knowledge they have strictly confined their activities, heretofore, to the Chicago area. Apparently, they have now branched out into St. Louis, or if they have always had a branch in St. Louis they apparently did not handle Sealy merchandise out of it before this time. If they did no one was aware of it.

I would say definitely it would be a violation of your territory and contract if the Chicago plant shipped merchandise to St. Louis for Harrison Wholesale Company. It may be the Chicago plant is entirely innocent about the matter not knowing it is being handled out of St. Louis. Actually, the orders may be placed here by the Chicago office, and shipped out of a central warehouse operated by Harrison entirely unknown to the Chicago plant.

I will immediately take it up with the Chicago plant, and find the true status of the handling. Rest assured we shall immediately take the proper steps to see to it that it is brought in line of our territory and contract policies.

Just as soon as I have some further information I shall advise you.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/lp

[fol. 917E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 499

August 3, 1955.

Mr. Morris A. Kaplan
Sealy Mattress Company
903 North Halsted Street
Chicago, Illinois

Dear Morry:

The Memphis office has called to my attention a situation concerning the Harrison Wholesale Company who I know you have been selling for a number of years here in Chicago.

It appears they have a branch in St. Louis located at Natural Bridge and Florissant. They have a catalog which shows Sealy mattresses with the alternate names from the regular resale line. They tell me they are definitely advertised and billed as Sealy goods. I gather this means they are being billed by Harrison Wholesale in St. Louis.

I have a feeling that so far as your office is concerned you have no knowledge of the fact Harrison Wholesale is selling merchandise of the Sealy brand in St. Louis. What is happening is they are ordering these mattresses from you out of their Chicago office, delivering them to their Chicago warehouse, and in turn shipping them to St. Louis.

Now that the matter has been brought to our attention it will be necessary for us to check in from this end, and find out the true status of the handling. Also, for you to take proper steps to eliminate Sealy mattresses being sold by Harrison outside of your territory, unless those orders are cleared through the national office so they can be channeled to the proper operating unit.

Inasmuch as Memphis is on my back about it would you check with MacGillivray or whoever necessary to see if we cannot bring this thing quickly to a satisfactory conclusion.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

[fol. 918E] In United States District Court

Government's Exhibit No. 500

Sealy Mattress Company

Sleeping on a Sealy is like Sleeping on a Cloud

Chicago 22, Illinois
903-933 North Halsted Street

August 8, 1955.

Mr. E. H. Bergmann
Sealy Incorporated
666 Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

In reply to your letter of August 3rd regarding the Memphis Office telling you about Harrison Wholesale Company, I do not understand what this situation can be.

We do not sell Harrison Wholesale any Sealy goods. We sell them a private brand line of merchandise, and, to my knowledge, they have never even asked us for Sealy goods.

Whether you are aware of it or not, however, Harrison Wholesale do buy a catalog line of Sealy goods through Sealy Incorporated. If they have any Sealy goods in St. Louis, such Sealy goods would probably have been furnished them by Sealy of Memphis rather than ourselves.

Just to make sure there couldn't be a slip-up here, I will have the matter checked by our Order Department and by Mr. McGillivray.

It might also help to ask the St. Louis office of Memphis factory to report the law label on this merchandise.

Best regards.

Yours very truly, Sealy Mattress Company, Morris A. Kaplan.

MAK:mk

cc: C. B. McGillivray, Order Department.

[fol. 919E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 501

August 11, 1955.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mrs. Embree:

I am afraid I am going to have to have further information from you relative to the matter of the Harrison Wholesale Company selling Sealy merchandise.

I find we do sell them Sealy merchandise through the catalog program, but the merchandise that we have listed is indicated by the symbols of S-130 to S-155. It is true that they are called Sealy's, but they are not identified as indicated by your letter as having the alternate names from the regular resale line. I have no knowledge that these items are advertised as Sealy, but I gathered from your letter that apparently advertisements have appeared in newspapers on these items.

We have made a number of sales to Harrison Wholesale Company for these items, and just in the last few weeks we sent you our order #429 dated July 22 for a shipment to East St. Louis, Illinois.

Would you please ascertain if it is possible to get one of these catalogs or to send to me further evidence of this advertising. If you cannot get the catalog will you have your man procure for you the names these people are using, and more data so I can dig into it further.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/lp

[fol. 920E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 502

August 11, 1955.

Mr. Morris A. Kaplan
Sealy Mattress Company
903 North Halsted Street
Chicago 22, Illinois

Dear Morry:

In reply to your letter of August 8 relative to the Harrison Wholesale Company I must admit your letter shows how dumb I am.

It never occurred to me for a second that Harrison Wholesale could be one of the companies we sell Sealy merchandise to through Henry Lipson's catalog program. This, of course, throws an entirely different light on the subject. I shall write to Mrs. Embree further on this subject, and I have a feeling the story will be entirely different than that as outlined by her in her letter of complaint of July 25.

Incidentally, I have checked our file here and I find we have received a few orders from Harrison and as a matter of fact we have sent a couple of orders to Memphis for delivery in the southern part of Illinois.

If I have any further problems in connection with this item, I will write or talk to you about it later.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/lp

[fol. 921E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 503

September 20, 1955.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mrs. Embree:

This being Saturday I have had a chance to somewhat clean up my desk and take a look at my follow up file.

I do not find a reply to my letter of August 11 relative to the obtaining of one of the catalogs from the Harrison Wholesale Company to determine whether or not these people are selling merchandise other than that offered to them through the catalog program.

I am particularly anxious to nail down whether or not they are offering our regular resale items under the alternate names as claimed by your St. Louis salesman.

Another point that definitely we want to nail down is his statement that these are definitely advertised. In this respect I would like to know whether they are advertised in newspapers or just how because we certainly do not want the catalog program to result in contract violations.

Can you help me out any with further data on this subject?

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lk

[fol. 922E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 504

SEALY COMPANY OF THE SOUTHEAST

Sleeping on a Sealy is like Sleeping on a Cloud

P. O. Box 2847—354 S. Parkway, West
Memphis 2, Tennessee

September 22, 1955.

Mr. E. H. Bergmann
Sealy Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Bergmann:

Have not answered your letter of August 11 as our St. Louis salesman has been unable to secure another page from the Harrison Wholesale Company catalog. However, he informs me that they have a new catalog coming out October 1st and he will secure the necessary papers for us.

Am writing him today requesting all the information he can give on this situation and will try and secure answers to the third paragraph of your letter.

With best regards, we are,

Sincerely yours, D. B. Embree, Sales Department, Sealy Southeast.

DBE:a

Manufacturers of Bedding and Convertible Sleeping Equipment.

[fol. 923E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 505

SEALY COMPANY OF THE SOUTHEAST

Sleeping on a Sealy is like Sleeping on a Cloud

P. O. Box 2847—354 S. Parkway, West
Memphis 2, Tennessee

October 15, 1955.

Mr. E. H. Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Bergmann:

So far I have not been able to get definite information from our St. Louis salesman regarding the fact that the Harrison Wholesale Company were advertising Sealy merchandise. He did, however, send me a catalog sheet showing the mattresses which they are running under the Sealy name and I am enclosing this for your information.

With best regards, we are

Sincerely yours, D. B. Embree, Sales Department, Sealy Company of the Southeast.

DBE/c

Manufacturers of Bedding and Convertible Sleeping Equipment.

[fol. 924E]

FINE INNERSPRING MATTRESSES
BOX SPRING ENSEMBLES BY **Sealy**



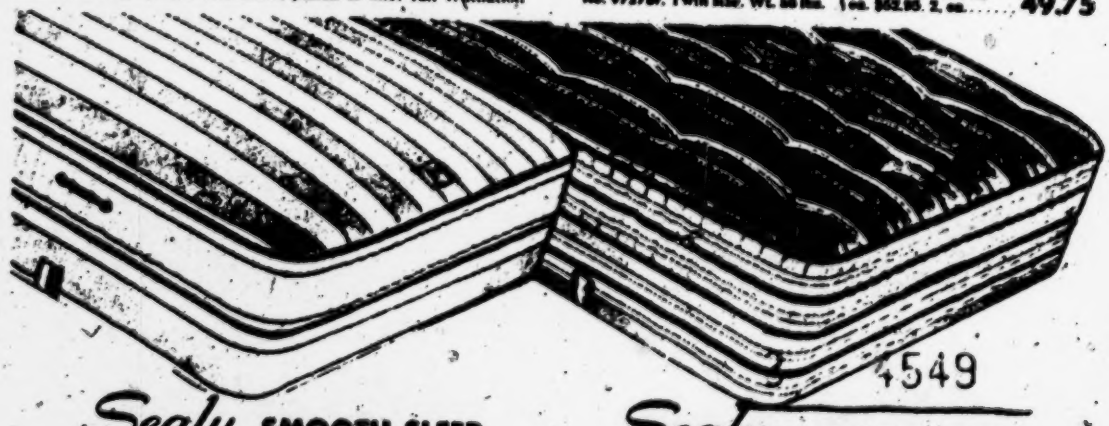
Extra back support with posture-lift coil construction cushioned with deep layers of foam latex.

Sealy REGAL SUPREME Mattress and Box Spring

- 510 scientifically tempered coil springs
- Provides firm restful back support
- Thick genuine foam latex top and bottom
- Finest imported Belgian Damask cover
- Pre-built Crush-proof, vertical stitched border for durability
- Matching Box Spring has 260 coil foundation
- 8 plastic ventilators keep mattress fresh at all times

REGAL SUPREME MATTRESS—A mattress designed for people who want the extra comfort and the extra luxury that only thick foam latex cushioning can give. Regal Supreme has extra fine quality white layer felt, cradling innerspring coils scientifically designed to support firmly and comfortably. This super deluxe mattress has all of the famous Sealy extra fine quality, materials and tailoring.
Innerspring—Resilient 510 coil construction designed to support firmly and comfortably, and made of fine Premier spring wire. All coils firmly anchored with steel helicals.
Upholstery—Extra fine quality white layer felt, covered with finest foam latex padding. Double stitched sisal pads for insulation.
Cover—Finest Belgian damask—long wearing color fast.
Border—Genuine perbuilt, crush-proof, vertical stitched. Well padded and embroidered. Outside border cloth and cotton filling is reinforced with a muslin backing, all securely stitched.
Ventilating—8 large plastic ventilators, placed to offer full ventilation through entire mattress. 4 cord handles. Fully tufted in diamond pattern. F.O.B. factory nearest you.
No. 972739. 54" Full Size. Wt. 55 lbs. (List $79.50. Dlr's. ea. $52.95 2. ea. **49.75**
No. 972769. 39" Twin Size. Wt. 45 lbs.

MATCHING REGAL SUPREME BOX SPRING—A deluxe 260-coil Box Spring that gives complete, firm support. The extra firm Premier spring steel wire construction designed specifically to match the deluxe mattress above. Coils are mounted over select hard wood frame and securely attached by air powered staples in such a manner as to eliminate coil noises. Insulated with double-stitched sisal pads and finest quality white layer felt. 4 cloth handles for easy handling. Outside edges hemmed and taped to last for life of mattress. Dust proof bottom. FOB factory nearest you.
No. 972779. Full size. Wt. 80 lbs. (List $79.50. Dlr's. ea. $52.95. 2. ea. **49.75**
No. 972789. Twin size. Wt. 66 lbs.



4549

Sealy SMOOTH-SLEEP 312-Coil Tufteless Mattress

- Posturebilt for firm support—heavier center coils
- Completely smooth tufteless top—no buttons to snag
- Extra fine woven stripe cover—Prebuilt border

Another fine Sealy product constructed to exacting specifications for comfortable restful sleeping and long wear. Special 312 coil Posturebilt unit with heavier coils through center—where most of the weight is carried—outside edges have heavier coils with Permaform edge construction. Insulated with double stitched sisal pads to eliminate coil feel and upholstered in finest quality white layer felt. Entire insulation and upholstering anchored securely to prevent shifting and indentures. Genuine crush proof vertical stitched prebuilt border with double inner roll steel ring construction well padded to make a permanent upright sidewall. Covered in extra fine quality 8 oz. fancy woven stripe sateen ticking. 8 large plastic vents for full ventilation. 4 cord handles for easy turning. Shipped FOB factory nearest you.
No. 972799. 54" Full size. Wt. 65 lbs. (List $69.50. Dlr's., ea.
No. 972869. 39" Twin size. Wt. 45 lbs. ($46.30 2 lots, ea. **43.15**

260-Coil Smooth Sleep Box Spring To Match—Premier spring wire construction firmly anchored to select kiln dried hardwood frame. Insulated with double stitched sisal pads and topped with white layer felt. Designed as a perfect foundation for the smooth sleep mattress. 4 cloth handles. Outside edges hemmed and taped. Dust proof bottom.
No. 972819. 54" Full size. Wt. 80 lbs. (List $69.50. Dlr's., ea.
No. 972829. 39" Twin size. Wt. 56 lb ($46.30 2 lots, ea. **43.15**

Sealy CONTOUR-FORM 286-Coil Extra Firm Mattress

- Extra firm support—Designed for relief of back pains
- Fine fancy woven striped cover—Genuine Prebuilt border
- 240 coil special firm box spring to match

This healthful, comfortable mattress was designed by Sealy engineers and medical consultants for those who suffer from aching, tired back muscles. The extra-firm construction and resiliency is regarded as the most healthful and correct posture type of support recommended today. Has semi-rigid 286 coil hinged unit offering 25% additional convolution support. Insulated with double stitched sisal pads permanently attached to unit and upholstered with the very finest white layer felt. Genuine crush-proof, padded vertical stitched prebuilt border made with double inner roll steel ring construction to make a permanent upright sidewall housing. Covered in fine 7 oz. fast color fancy woven stripe ticking. 8 ventilators to keep mattress thoroughly ventilated. 4 cord handles for easy turning. Deeply button tufted. Shipped FOB factory nearest you.
No. 972829. 54" Full size. Wt. 66 lbs. (List $59.50. Dlr's., ea.
No. 972869. 39" Twin size. Wt. 46 lbs. ($39.90. 2 lots, ea. **37.50**

240 Coil Correct Posture Box Spring To Match—Made of finest Premier spring wire construction, insulated with double stitched sisal pads and white layer felt. 240 heavy steel coils firmly fastened to kiln dried hardwood frame. 4 cloth handles. Dust proof cover.
No. 972839. 54" Full size. Wt. 80 lbs. (List $59.50. Dlr's., ea.
No. 972869. 39" Twin size. Wt. 56 lbs. ($39.90. 2 lots, ea. **37.50**

Merchandise on this page not included in our freight offer

[fol. 925E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 506

October 18, 1955.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis, Tennessee

Dear Mrs. Embree:

Thanks for your letter of October 15th. I notice that the sheet which you sent to me is the regular items we have sold to all of the catalogue houses.

Please keep me advised whether or not you find any evidence of these people advertising through other than their catalogues and using names other than these. I am particularly interested in knowing whether or not they are using our alternate resale names as the salesman claims.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

ehb:cj

[fol. 926E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 507

August 18, 1955.

Sealy Mattress Company
West Railway & Gould Ave.,
Paterson, N.J.

Att: Mr. Max Lewis

Dear Mr. Lewis:

Enclosed herewith please find our check in the amount of $81.68 for your 5% commission on sales in your territory by our accounts.

Very truly yours, Sealy Mattress Company of New York City, Inc., A. Eisenberg, Controller.

AE:dr

encl (4)

cc: Mr. E. Bergmann.

[fol. 927E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 508

August 24, 1955.

Mr. Eugene Kligman
460 Morgan Avenue
Brooklyn, New York

Dear Eugene:

I received a copy of a letter written by your controller on August 18 to the Paterson plant in which you enclosed a check in the amount of $81.68 as commission on sales by your stores in the Paterson territory.

In the first place I do not believe these reports. In the second place, if they are true, it is ridiculous that they be permitted to have merchandise in violation of our contracts when the sales do not amount to more than is indicated by these reports.

It seems to me if this is all the merchandise they can sell in a three month period, they should be told to either get the merchandise out of those stores or to buy that little amount of goods from the Paterson plant.

I do not like to wake up sleeping dogs, but what is right and this thing does not seem fair to me.

I would appreciate having you drop me a line on this subject.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lk

[fol. 928E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 509

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

460 Morgan Avenue—Brooklyn 22, New York
Evergreen 8-7760

New York Showroom—1 Park Avenue—New York
Lexington 2-8420

August 29, 1955.

Mr. Earl Bergmann
Sealy Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Mr. Bergmann:

In reference to your letter of August 24 concerning the shipments into the Paterson territory, I am making a personal investigation of this matter and should have a complete report on this for you within the coming week. It appears that these Jersey stores are not doing any business at all, and the only way we can get an exact figure and get the "honest" story is to contact not the buyers, but the bosses themselves.

I shall do this tactfully as soon as possible and advise you of results.

Sincerely yours, Sealy Mattress Company of New York City, Eugene Kligman.

EK/dr

Offered—Received—Not read

[fol. 929E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 510

September 19, 1955.

Mr. Eugene Kligman
Sealy Mattress Company
460 Morgan Avenue
Brooklyn, New York

Dear Eugene:

On the occasion of your being here for attendance at the board meeting I think you had planned on discussing with me our recent correspondence concerning shipments into the Paterson territory.

Since we were unable to make contact I am wondering if you can bring me up to date on what you found in regard to this matter through your personal investigation.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:jk

[fol. 930E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 511

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

460 Morgan Avenue—Brooklyn 22, New York
Evergreen 8-7760

New York Showroom—1 Park Avenue—New York
Lexington 2-8420

Offered—Received—Not read November 2, 1955

Mr. Earl Bergmann
Sealy Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

In reference to your letter of September 18 concerning the shipments into Paterson territory, I told you that I would inform you of my personal investigation.

I have discussed this matter with these people and find that Sachs, which has a 10 store chain, only has one store in Jersey. They receive in the Bronx only, they ship from the Bronx only. I have discussed the matter of the small sales in Jersey with them, and they tell me that their Jersey store was not doing well at all during this particular period. However, they believe sales will pick up.

We have a more serious problem, Earl, that has arisen. This problem concerns not our major chains, but concerns our largest department stores in the city of New York. Lord & Taylor's has stores in New York, New Jersey, and Connecticut. McCutcheons, which we opened up the day you were in the show room has stores in New York, and also one in New Jersey. B. Altman's also has stores in New York and one in New Jersey. These stores all buy out of New York, stock all merchandise out of New York and ship

out of New York. They don't differentiate in their warehouse as to what merchandise goes to Jersey and what merchandise stays in New York, and I don't see how we can make them buy samples, in the case of Lord & Taylor's, from New Jersey, Connecticut and New York.

Earl, this is a serious problem. To date, in a question of Lord & Taylor's, our Connecticut neighbors have been more than gracious in assisting us in the opening of this account, and have volunteered all aid possible to making this account a successful one for Sealy of New York and thereby gaining prestige for Sealy of Connecticut. However, in the case of Jersey, it is a serious problem, since this man does not realize the difficulty involved in first selling these people and then the difficulty involved in keeping them satisfied. They have no cases where the same factory does not ship them throughout the chain, since all receiving and shipping is from their New York warehouse.

We had a difficult situation arise here with Darling Stores, a chain of 42 juvenile stores located in New York, New Jersey and Connecticut. We opened up these stores and tried to get together with New Jersey and Connecticut to open them up for the group and were unsuccessful in integrating this deal. This group is still *anxious to do* [fol. 931E] business with Sealy but they have dropped our line because they could not use Sealy only for 22 stores in New York and not the other 20 in their local areas. They also receive all their merchandise in the Bronx, and ship all their merchandise out of the Bronx. They are the only one so far, that has agreed to purchase percentage wise from each plant, but they themselves do not know how it can be worked out in keeping records and stock, so that each section would have to act as a separate business.

I herewith enclose a letter I received from the Darling Store, informing us of their inability to continue business with us. Although they are a group of small stores, he explained to me that his wholesale purchases for this year would be approximately $100,000 in bedding. This certainly is not a small account to have to give up just because he has stores in other territories.

I certainly would appreciate your arranging a time so that we can sit down and discuss this entire situation while I am in Chicago. I will be there from the 10th through the

14th and would appreciate it if you could squeeze in some time for me.

Sincerely yours, Sealy Mattress Company of New York City, Eugene Kligman.

EK/dr

Enc.

[fol. 932E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 512.

DARLING DISTRIBUTING CORPORATION

America's Largest Juvenile Furniture and Toy Chain

370 Gerard Avenue—New York 51, N.Y.
CYpress 2-4385

Mr. Gene Kligman
Sealy Mattress Company
460 Morgan Avenue
Brooklyn, New York

October 26, 1955.

Dear Gene:

I think you are entitled to know the inside story on why the 42 Darling Stores find it impossible to continue the Sealy line. You and your company have been more than fair, and the product got a good reception from both our own people and the customers.

But the big drawback lies in the fact that our stores are distributed in New York, New Jersey, and Connecticut. The position taken by the opposing numbers in New Jersey and Connecticut created an absolutely insurmountable obstacle in handling your line. It created dissension among our store managers and it was impossible to get any kind of integrated, coordinated program under way, since our Metropolitan area embraces these three territories.

If you are ever able to get this thing organized on a basis that makes sense, please let us know.

Very truly yours, Darling Distributing Corporation,
Fred Weintraub, Vice-President.

FW/bc

[fol. 933E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 513

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland
Gilmor 5-7010

September 7, 1955.

Mr. Earl H. Bergmann
Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Dear Earl:

I am answering your letter of August 26th which we received along with a copy from Marcus Haas.

You realize, of course, the tremendous problem that we have in Washington, D. C. with no fair trade laws, but I do want to state that we have been selling two companies that specialize in selling furniture and bedding to the Military personnel. We know that they are selling these items at a discount, but have decided, as that is a tremendous portion of the business that is done in Washington, D. C. we would be smart in starting to get some of same.

Now as to this business of us shipping for a customer out of our territory. We have been under the impression that as long as we billed a store in our territory, and they wanted us to ship by freight for them, that it was perfectly alright. We realize we cannot bill anyone outside of our territory or sell to any store outside of our territory. But what is the difference, whether we ship direct for a store in our territory, or whether we ship it to the store and they in turn ship direct to the customer? I would like to be straightened out on this matter for all future references.

As regards this one transaction that was shipped by us

for a customer in Washington, D. C. to a consumer in Florida, we are very sorry that something happened that did not do the Memphis plant any good, and have put immediately into effect here in our office that this one particular account, who is undoubtedly, according to Marcus Haas cutting prices, we will never ship anything direct to a customer for them, and will only ship to their store that is located in Washington, D. C. You have our word and promise on this particular account.

[fol. 934E] Once again I repeat that I am extremely sorry that something came up from our plant that caused any contention, that as you and I well know, it is quite a problem, and where the answer lies, only the crystal ball can tell.

If there is anything further that I can do that would help this matter, just call on me for same.

Yours very truly, Sealy Mattress Company, J. R. Rudick.

jrr;rs

CC: M. L. Haas, Sealy Mattress Company, Memphis.

[fol. 935E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 514

May 21, 1956.

Mr. J. V. Moffitt, Jr.
Sealy Mattress Company
Lexington, North Carolina

Dear Joe:

I am in receipt of the letter dated May 8th from Earle Bergmann in regards to the Military Personnel Buying Co. which you have had trouble with in Fayetteville, N. C.

It has taken us some time to get some action on this particular business, but we have been in contact with their main office in Washington, D. C., have sent them a registered letter, and have their explicit promise that they will ship no Sealy merchandise out of the Washington, D. C. area into other areas of the country.

We were threatened that they could and would get Sealy merchandise elsewhere, but we stood on our contract rights that they could not take our merchandise from our territory and ship it elsewhere.

We have also suggested to them that if they have so-called "business" in your territory, that they contact you to see whether or not you will supply them. This is completely up to you. We certainly expect no more trouble on this account from this angle, but if you do continue to run into same, and are told that it is coming out of Washington, D. C., please advise us at once and we will do everything within our power to stop same.

Yours very truly, Sealy Mattress Company, J. R. Rudick.

JRR/av

CC: E. H. Bergmann.

[fol. 936E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 515

SEALY'S 75TH DIAMOND ANNIVERSARY

April 18, 1956.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mrs. Embree:

In reply to your letter dated April 13 relative to the U. S. Merchandise Mart, Pensacola, Florida, the writer wishes to advise he received a telephone call from Mr. Rudick yesterday morning and he is as upset over the matter as you are.

Between you and me; he has a problem because in Washington, D. C., the fair trade agreement is not recognized by law and it is the haven for discounters in America. Joe and I discussed the matter thoroughly and in this particular case where merchandise is shipped to another outlet this writer feels that legally we can stand on the contract which the Baltimore plant has in which Article 4:4 (B) specifically states that it is a part of the contract that the licensee cannot sell or deliver any Sealy product which he knows, or has reason to believe, is being delivered to a purchaser who intends to resell in a territory outside the licensee's exclusive territory. In my opinion there is no great legal danger involved in referring to that term in the contract and Mr. Rudick is going to take that position with the people in Washington.

When it comes to stopping a retailer in Washington from shipping merchandise that he has sold at a cut price, or at any price, in some other territory, legally I do not believe we even dare contest the matter. Of course, where Mr. Rudick was wrong in the first place was last fall when the

merchandise was shipped by his plant and he assumed there was no difference between his making a drop ship-
[fol. 937E] ment and the firm making the same shipment, but I pointed out to him there was a vast difference. Last year Mr. Rudick agreed not to make any further drop shipments and he maintains he has kept this agreement.

You will receive a letter from Mr. Rudick within a day or two and undoubtedly a copy of his letter to the Washington firm will be enclosed.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/kt

[fol. 938E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 516

SEALY SOUTHEAST

Sleeping on a Sealy is Like Sleeping on a Cloud

P. O. Box 2847—354 S. Parkway West
Memphis 2, Tennessee

Mr. E. H. Bergmann
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

April 13, 1956.

Dear Mr. Bergmann:

Re: Sealy Mattress Co., Baltimore Maryland and/or U. S. Merchandise Mart, Pensacola, Florida.

You will no doubt recall correspondence last fall regarding the drop shipment of Sealy Posturepedic Mattresses by the Baltimore factory to Pensacola, Florida, to fill orders taken by the U. S. Merchandise Mart of Pensacola.

Mr. Rudick assured Mr. Haas, Sr., in his letter of October 10, 1955, that if any more merchandise was shipped to Pensacola by the U. S. Merchandise Mart, Inc., Washington, D. C., that he would cut the account out.

This practice has continued. A violation occurred again in February that was brought to the attention of our salesman, by our exclusive Sealy Dealer, Marston & Quina.

On Tuesday, April 10, Mr. Van Metre, salesman for Marston & Quina, had a customer who purchased some furniture and then asked to see the Sealy Posturepedic. He showed them the mattress and foundation and gave his sales pitch. The customer was sold on the Posturepedic, however, when Mr. Van Metre wanted to write up the order, the customer said: "No, we can buy that for 30% discount over at the U. S. Merchandise Mart". Mr. Van Metre questioned them and asked if they were sure they could buy the Posturepedic from this Pensacola store. The customer said: "Oh, yes, we went over there this morning and he told us to come over here and look at the Posturepedic

and if we liked it, he would have it shipped direct to us from the Sealy factory in Baltimore".

If this shipment comes through, we stand to lose a customer that gives us in the neighborhood of $80,000.00. In addition to that, he is a valued Sealy dealer, who has handled the line on an exclusive basis for many years.

[fol. 939E] When this matter was brought to the attention of Sealy Incorporated, last year, and through you to the Baltimore factory, we were assured that this practice would be stopped.

Regardless of whether the merchandise is shipped from the Baltimore factory or from the U. S. Merchandise Mart, Inc., Washington, D. C., it is a violation of our territory. The merchandise in question is being solicited and sold in Pensacola. Florida is a fair trade state. We maintain the resale price of $79.50. This dealer is soliciting business at a retail price of $57.00. The question of where the shipment comes from, Washington or Baltimore, does not lessen the violation.

It is our understanding that if we receive an order from a dealer in our territory to be shipped to an individual in another territory, that the order must be submitted to the Sealy Licensee in that area for shipment. If the Licensee feels that he cannot make shipment, then we have no alternative but to refuse the order. Orders of this type are sent to various plants under our own purchase orders.

In reading over the file where Marcus registered complaint with you last year, I came across a copy of Mr. Rudick's letter of September 7th to you. We would appreciate a copy of your reply to this letter, specifically your answer to paragraphs three and four, which we quote for your ready reference:

"Now as to this business of our shipping for a customer out of our territory. We have been under the impression that as long as we billed a store in our territory, and they wanted us to ship by freight for them, that it was perfectly alright. We realize we cannot bill anyone outside of our territory or sell to any store outside of our territory. But what is the difference, whether we ship direct for a store in our territory, or whether we ship to the store and they in turn ship direct to the customers? I would like to be straightened out on this matter for all future references."

"As regards this one transaction that was shipped by us for a customer in Washington, D. C., to a consumer in Florida, we are very sorry that something happened that did not do the Memphis plant any good, and have immediately put into effect, here in our office, that this one particular account who is undoubtedly, according to Marcus, cutting prices, we will never ship anything direct to a customer for them, and will ship only to their store that is located in Washington, D. C. You have our word on this particular account."

Surely you can understand, Mr. Bergmann, that our exclusive dealer cannot sell Posturepedic at $79.50 in Florida, which is a fair trade state, when a concern located in [fol. 940E] that same city is soliciting business on Posturepedics at $57.00. We are deeply disturbed over this situation and feel that immediate steps should be taken to get it corrected.

No matter where the merchandise is shipped from, it is being shipped by a Sealy factory out of this franchised area, with the knowledge that his customer maintains a place of business in our territory and is soliciting business in our territory regardless of whether the ultimate consumer is invoiced out of Washington or Pensacola or is sold on a c.o.d. basis.

In the past, we had a violation by one of our dealers in Fort Smith, who has branch stores just over the Arkansas line in Oklahoma. When the matter was brought to our attention, we immediately took steps to correct same; and, according to our knowledge and from discussions with Mr. Louis Haas, no further violations have occurred.

We are sorry about the length of this letter, however, this matter is of such importance to us that we felt it necessary to bring the complete situation to your attention so that you might act on it promptly.

Please let us hear from you by return air mail in regard to this situation so that we may write our dealer.

Your co-operation will be very much appreciated.

Sincerely yours, D. B. Embree, Ass't. to the President, Sealy Southeast.

cc: Mr. Joe Ruddick, Sealy Mattress Co., 2307 Hollins St., Baltimore, 23, Maryland.

[fol. 941E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 517

Mr. Joe Moffitt
Sealy of the Carolinas
Lexington, North Carolina

September 26, 1955.

Dear Joe:

We have a very serious situation in the Eastern part of Carolina in reference to the Christian Harwood Furniture Company, whose main store is in Durham which is in Lexington's territory but they have a very large branch store in Henderson, North Carolina which is in the Richmond territory.

Our Salesman has been trying to line up the Henderson, North Carolina store for a deal on the Enchanted Night Golden Sleep Mattress Sale.

Last week on September 21st our Representative, Mr. Joseph Catalano, was in Christian Harwood Store at Henderson and to his amazement he found displayed on the main floor of the bedding department 1 4/6 Enchanted Night Golden Sleep Mattress and 1 4/6 matching box spring (this is all of the merchandise our salesman saw). But, Mr. Craven, the buyer of the Henderson Store, told Mr. Catalano that they had a half dozen mattresses and a half dozen box springs in stock in Henderson which they had drawn from the Durham Store and that it was the intentions of Mr. Craven to run a half page ad on the Enchanted Night Golden Sleep Mattress prior to October 1st. And, in reference to the mat, Mr. Craven knew all the details concerning our new Hurry, Hurry mat.

Joe you know this is completely against Sealy's rules and regulations and something must be done in reference to this situation. I am taking the liberty of sending a copy of this letter to Earl Bergmann and I expect immediate action.

Thanking you for an immediate reply, we remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

[fol. 942E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 518

October 14, 1955.

Sealy Mattress Company
Box 2236
Richmond 20, Virginia

Attention: Mr. Sidney Sutherland

Dear Sidney:

We must apologize for not answering your letter of September 26 earlier. We dictated a letter and had it typed on September 30 and then we came to the conclusion that before sending it we should have our salesman investigate this matter of Christian Harward Furniture Company of Henderson, North Carolina, a little further.

In the first place, we have made no sales whatsoever of Sealy merchandise either to Christian Harward Furniture Company of Henderson or Christian Harward Furniture Company of Durham since May 20, 1955, at which time we sold the Durham store Sealy Posturepedic foam rubber merchandise. We have never sold this concern, in any of its branches, Enchanted Nights merchandise.

So now for the report from our salesman. He went to the manager of Christian Harward Furniture Company in Henderson, North Carolina, and was told that they had bought one Sealy Enchanted Nights innerspring mattress from a dealer near Henderson, North Carolina (unidentified) (possibly your customer instead of our own). They had not taken a mattress from the Christian Harward Furniture Store of Durham. They had only the mattress on display. There was no box spring. They have no basement, therefore the basement could not have been full of Sealy merchandise.

Incidentally, the customer for whom they got this Sealy Enchanted Nights mattress did not take the mattress, so,

therefore they are going to return the mattress to the store from which they bought it immediately.

[fol. 943E] We get the general impression that Mr. Craven, the manager of Christian Harward Furniture Company of Henderson, North Carolina, was pulling your salesman's leg.

In any event, we are entirely in the clear on this matter.

I must say, Sidney, that I have never yet sent Earl Bergmann a copy of any letters which I have written to you. It is going to be necessary, of course, to send a copy of this letter to him because you sent him a copy of your letter of September 26. I do not think that it is necessary to bring Mr. Bergmann into matters such as these, which frequently are fully explainable, as above.

With kind personal regards.

Yours very truly, Sealy of The Carolinas, J. V. Moffitt, Jr.

JVMjr/eg

CC: Mr. Bergmann.

[fol. 944E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 519

SEALY MATTRESS COMPANY

Makers of Finer Mattresses Since 1881

Sleeping on a Sealy is like sleeping on a cloud

8 South Harvie Street
Telephone 5-2845
Richmond 20, Virginia

New Address

Williamsburg Ave, & Goddin St.
P. O. Box 2236
Telephone 7-0348

October 18, 1955.

Mr. E. H. Bergmann
Sealy, Incorporated
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

I am enclosing you copy of letter which I have today written to Joe Moffitt. I feel that the situation is well in hand and I want to assure you that there is no animosity or hard feelings on my part in reference to any of my surrounding licensees.

Looking forward to seeing you in Chicago in November, I remain

Sin-"Sealy" yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

enc.

Offered—Received—Not read.

[fol. 945E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 520

October 18, 1955.

Mr. J. V. Moffitt, Jr.
Sealy of the Carolinas
Lexington, North Carolina

Dear Joe:

I wish to thank you for your communication of October 14th which is in reply to my communication of September 26th regarding the Christian Harward Furniture Company, Henderson, North Carolina.

I am very happy that you delayed answering my letter in that you had your salesman investigate the situation before writing me. The explanation as given in your letter is quite understandable and I am happy to know that this is the situation because I realize that it is a very hard thing for you or anyone to govern overlapping stores in various territories. Your reply to me is greatly appreciated.

I notice what you say about sending a copy of the letter to Earl Bergmann and I assure you that there are no intentions on my part to bring Mr. Bergmann into any discussion which may occur between you and me. However it has been my custom in the past to more or less send copies of all correspondence of such matters to Earl feeling that it was best for him to know the situation all over the entire country. I think if all of us did this it may be a burden upon Earl but it would certainly give him a clearer picture of the workings between various licensees. In view of the above I am sending him a copy of this letter which I think will entirely clarify the situation.

Thanking you again for your many kindnesses and looking forward to seeing you in Chicago, I remain

Sincerely yours, Sidney Sutherland, Sealy Mattress Company.

SS:mp

cc: Mr. E. H. Bergmann,

[fol. 946E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 521

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of The Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland
Gilmor 5-7010

5 July 1956.

Mr. E. H. Bergmann
Sealy, Incorporated
666 North Lake Shore Drive
Chicago, Illinois

Dear Earl:

I am in receipt of your letter dated 22 June 1956, with enclosures from the U.S. Merchandise Mart in Pensacola, Florida.

As you know, we contacted this company, which by the way in Washington, D. C. goes under the name of the American Home, Incorporated Company, and they assured us that they would not ship any Sealy goods out of our territory. In fact, they have shown us that they are now handling both Serta and Englander, whose goods they can ship wherever they desire without any repercussions.

Upon receipt of your letter, with copy of Invoice date 12 June 1956, we contacted this account and wanted to know how this sale happened after their promise to discontinue same. They did not give us a reasonable answer and we have told them and have set up the mechanics that they will receive no more goods from us, unless they can prove themselves to our entire satisfaction.

I am, also, taking this same action with the Military Personnel Buying Service that has cropped up elsewhere.

I also, want you to know that each of these accounts have been about $25,000 a year volume on Resale only.

Tell me where we can replace same, will you. In addition I wish to mention that investigation has shown us that 90% or more of their sales are in the immediate Washington, D.C. area to Military Personnel, which we will now lose to competition. It seems that the military in Washington, D.C. don't even shop elsewhere, but go right to these two sources and that is why we have sold them. We have had no complaints from the legitimate retailers there, because these are sales they don't even know about.

We are trying to find out where these mattresses came from. They claim it was not ours, and not shipped from Washington. If they can prove to me that it came from [fol. 947E] somewhere else, we want to continue selling them as long as they restrict themselves to selling in my territory only.

I am sending a copy of this letter to Edgar Haas, Jr., and be assured if there are reoccurrences they are not getting the goods from us. If they do submit something to us that we feel assures us that this can no longer happen, I will advise you before hand.

So, understand our problem and give us some territory to overcome these problems.

I am still carrying the Sealy Banner . . . Long May It Wave.

Yours very truly, Sealy Mattress Company, Joseph R. Rudick.

JRR/dn

Copy To: Edgar Haas, Jr., Sealy Mattress Company, Memphis, Tennessee.

[fol. 948E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 522

SEALY SOUTHEAST

Sleeping on a Sealy is Like Sleeping on a Cloud

P. O. Box 2847—354 S Parkway West
Memphis 2, Tennessee

February 29, 1956.

Mr. E. H. Bergmann
Sealy, Inc.
666 North Lake Shore Drive
Chicago, Illinois

Dear Mr. Bergmann:

Our Illinois representative, Mr. Fred Martels, advises that the Mitchell Furniture Company of Mt. Vernon, Illinois, which is in our territory, is displaying the Deluxe Tuftless Anniversary Natural Rest mattress at $49.50.

These mattresses are coming from the Louisville Licensee through the Indiana store of the Mitchell Furniture Company.

As you know we did not make the Anniversary Natural Rest tuftless in either the $39.95 or the $49.50 quality. We would appreciate it if you would take steps to stop the Louisville plant from channeling merchandise to dealers in our area, as it creates quite a bit of confusion and causes us to lose business on our own resale $49.50 and $59.50 items.

Please let us hear from you as soon as possible regarding this matter and with kindest regards, we are

Sincerely yours, D. B. Embree, Sales Department, Sealy Southeast.

DBE/ra

cc:

[fol. 949E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 523

SEALY'S 75TH DIAMOND ANNIVERSARY

March 2, 1956.

Mrs. D. B. Embree
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Mrs. Embree:

This letter acknowledges receipt of your letter of February 29 relative to the Mitchell Furniture Company of Mt. Vernon, Illinois.

A photostatic copy of your letter will immediately be forwarded to the Louisville plant with a request that Louisville take immediate action to discontinue channeling merchandise from Indiana to the store located in Mt. Vernon.

We will keep you advised relative to developments.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

[fol. 950E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 524

SEALY'S 75TH DIAMOND ANNIVERSARY

March 2, 1956.

Mr. William Edie
Sealy Mattress Company
1115 Franklin Street
Louisville 6, Kentucky

Dear Bill:

Enclosed is a photostatic copy of a letter received from the Memphis plant which is self explanatory.

Will you please take the necessary steps to have your dealer, the Mitchell Furniture Company, discontinue channeling merchandise received in the Ihdiana store to the store in Mt. Vernon, Illinois.

This office will appreciate hearing how you handle this complaint.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

Enc.

[fol. 951E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 525

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street—Louisville 6, Kentucky—Phone Wa 1366

March 12, 1956.

Mr. Earl Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

Dear Earl:

Leon Prising is going down to talk to Mr. Moriarty at Mitchell Furniture Company this week concerning the channeling of mattresses back and forth between Mt. Vernon and Vincennes, Indiana. As you know, this did come up once before and we tried to make it very clear that it shouldn't be done. Mr. Embree of Sealy Southeast did not contact us on this matter, so I'm not aware of just how many might have been sent down there, or how long this might have been going on. I do recall that last spring some Posturepedics were involved when Mt. Vernon bought a display and our boys at Mitchells in Vincennes, Indiana did not. Mr. Moriarty has been on a vacation and there's some possibility that some pieces could have been sent over there while he was out. We'll have to determine after Leon talks to them what could have happened. I'll write to you next Friday after I get a chance to find out what Leon says.

Very truly yours, Sealy Mattress Company, Wm. A. Edie, Sales Manager.

CC: Mr. Embree, Sealy Southeast

WAE/ms

[fol. 952E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 526

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

200 Cabel Street—Louisville 6, Kentucky—Phone Wa 1366

Mr. Earl Bergmann
Sealy, Inc.
666 Lake Shore Drive
Chicago, Illinois

May 7, 1956.

Dear Earl:

I'm enclosing a copy of the letter dated May 3rd from H.W. Moriarty, manager of Mitchell Furniture Company in Vincennes, Indiana. This is his answer to the charge by Memphis that we were shipping into Memphis territory.

As we noted in my previous letter, we had had occasion about a year ago to talk to Mr. Moriarty about this when we had the feeling that he was buying Posturepedic from the Illinois store at the time the promotion was going on a year ago. We knew he was familiar with our policy of not sending things back and forth. This letter seems to be a legitimate excuse, for we do know that Memphis supplies a different mat than we do when it comes to advertising. If Memphis will be satisfied that two mattresses are all that went, of course, there's no real harm done. However, if they are using this as an excuse to ship a large number, then I feel that some other action should be taken.

These two stores are far enough apart that I don't think they would find it profitable to truck mattresses back and forth normally. Since the store is located right on the border of the state of Illinois, we are at a loss to know how to actually check any shipments they might make to the Illinois store, without possibly bribing their shipping clerk or someone else to reveal such information.

Very truly yours, Sealy Mattress Company, Wm. A. Edie, Sales Manager.

WAE/ms

[fol. 953E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 527

May 8, 1956

Mr. William Edie
Sealy Mattress Company
1115 Franklin Avenue
Louisville 6, Kentucky

Dear Bill:

On March 26 you wrote to me that the manager of the Mitchell Furniture Co. of Vincennes, Indiana was still on vacation and Leon had not had an opportunity to discuss the matter of Sealy merchandise being transferred from the Vincennes, Indiana store to the Mt. Vernon, Illinois store. As you know the Mt. Vernon store is in the Memphis territory.

Enclosed is a copy of a letter received from the Memphis plant relative to merchandise which apparently came from your plant and on which Memphis has received a complaint.

It is the opinion of the writer that two things should be done. First, the customer's mattress must be quickly rebuilt by the Memphis plant as it has been returned there. The second thing that should be done is that, inasmuch as this is merchandise made by you and which should not have found its way into the Memphis territory, Louisville should reimburse Memphis for the cost of the rebuilding. I believe this reasoning is fair. The expense necessary to take care of the complaint in Memphis territory would not have occurred if your merchandise had not found its way into the Memphis territory. It is my feeling this complaint is different and cannot be handled under the interplant service policy covering complaints on merchandise made by one Sealy plant and carried by the purchaser into another plant's territory.

A letter will be sent to the Memphis plant asking that they rush the necessary service for the repair of the bedding and return it to Mr. Thompson and forward to

your attention the cost of the service, sending a copy of the invoice to this office.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:lp

Enc.

cc—Mrs. D. B. Embree.

[fol. 954E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 528

Sleeping on a Sealy is Like Sleeping on a Cloud

SEALY SOUTHEAST

P. O. Box 2847—354 S Parkway West
Memphis 2, Tennessee

December 4, 1956.

Sealy, Incorporated
666 North Lake Shore Drive
Chicago, Illinois

Attn: Mr. E. H. Bergmann

Dear Earl:

We have received a notice from one of our salesmen that the West Virginia Sealy salesman called on Patterson & Roberts Hardware Company of Livingston, Tennessee.

Since this account is well within our territory we would appreciate your notifying the plant involved.

With kindest personal regards, we are

Very sincerely yours, Edgar C. Haas, Jr., Sales Department, Sealy Southeast.

ECH,Jr./s

[fol. 955E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 529

December 17, 1956.

Mr. Edgar C. Haas, Jr.
Sealy Mattress Company
P. O. Box 2847
Memphis 2, Tennessee

Dear Eddie:

I wish to acknowledge receipt of your letter of December 4th regarding the West Virginia Sealy salesman calling on one of your accounts in Livingston, Tennessee.

A letter will be sent today to the Bluefield, Virginia plant calling this matter to their attention. I think the salesman to whom you are referring must have come from the Bluefield plant.

Just as soon as I hear from Jack Metcalfe I will advise you further.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/sm

[fol. 956E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 530

December 18, 1956.

Mr. J. L. Metcalfe
Sealy Mattress Co.
P. O. Box 432
Gurney at Furnace St
Bluefield, Va.

Dear Jack:

We are in receipt of a letter from the Memphis plant saying that the West Virginia Sealy salesman had called on an account in Livingston, Tennessee.

We cannot see how it would be possible for one of your men to get over to Livingston as it lies well west of Knoxville. I have a hunch it could have been one of the Louisville men, however, the report came to us that it was the West Virginia Sealy salesman.

Will you please check with your Squirrel Hunter and find out whether or not he got lost chasing a squirrel and got clear over there. Then, advise this office so that we can tell Memphis you have bought him a compass, in case he gets lost, and you are sure that in the future he will not stray so far from home base.

Personal regards.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:mc

cc: Edgar C. Haas, Jr.

[fol. 957E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 531

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of The Famous Sealy Posturepedic Mattress

P.O. Box 432—Gurney at Furnace Streets
Bluefield, Virginia—Phone Fairfax 61193

December 26, 1956.

Sealy, Inc.
666 Lake Shore Drive
Chicago 11, Illinois

Attention: Mr. E. H. Bergmann

Dear Earl:

Received your letter of the 18th with reference to a West Virginia Sealy salesman calling on an account in Livingston, Tennessee, which is in the Memphis territory.

Had this been a year ago when Olin Austin (the Squirrel Hunter) was a drinking man, I would swear that he got into one hollow by rut and couldn't get out of it and ended up in Livingston. Inasmuch as he is a tee-totaler now, though, I am sure he is not guilty. In fact, I only wish that he had enough energy to want to work in another man's territory, so I could make him stop it and exercise such enthusiasm and energy in our own territory. Seriously, I have checked with our three boys and of course they are not guilty and none of them, including the writer, even knows where Livingston, Tennessee, is located or even if it is in the state of Tennessee.

Bob Culp in Pittsburgh worked a salesman in a part of West Virginia, but I donbt seriously if he has a man crazy enough to call on customers in Tennessee. Ar you say, I

expect you will find this to be one of the Louisville salesmen as the territory there does overlap and so forth.

With kindest regards,

Sin-Sealy yours, Sealy Mattress Company, J. L. Metcalfe—Manager.

JLM:HLP

CC: Sealy Mattress Company, Memphis, Tennessee.

[fol. 958E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 532

Mr. Edgar Haas, Jr.
Sealy Mattress Co.
354 S. Parkway West
Memphis 2, Tenn.

December 28, 1956.

Dear Eddie:

Undoubtedly you have read your copy of Jack Metcalfe's letter to me of December 26, regarding his man calling on one of your accounts in Livingston, Tenn. As I pointed out to you previously, I had a feeling it would not be one of the Bluefield men but I could not conceive who else could be considered a West Virginia salesman.

You note that Jack states that Pittsburgh had a salesman working in a part of West Virginia so possibly, it might have been his man but I am inclined to agree with Jack that a Pittsburgh man would not be crazy enough to go clear over into Tennessee particularly where Livingston is located. I shall drop a letter to the Pittsburgh plant and check with them.

In the meantime, I would like to have you ascertain more facts concerning this so-called report of a West Virginia Sealy salesman. Maybe you can get the name of the fellow or find out whether he has been back in the store since the first visit.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:mc

[fol. 959E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 533

December 28, 1956.

Mr. R. G. Culp
Sealy Mattress Co.
1900 Lowe St.—West End
Pittsburgh 20, Pa.

Dear Bob:

We have a report in this office that a West Virginia Sealy salesman has been calling on a furniture dealer in Livingston, Tenn. This report is rather vague inasmuch as we do not know the name of the so-called West Virginia Sealy salesman.

I wrote to Jack Metcalfe, thinking that possibly one of Jack's men could have gotten over the State line but Jack has checked the matter and he definitely says that none of his three men are guilty.

I recall that you have a man working in West Virginia and it may be possible that your boy is the culprit. Will you please ascertain whether or not your man, provided you still have a West Virginia man, did get over into Livingston, Tenn. If he did, drop me a note so I can tell Memphis [Copy illegible] ave now discovered who the man is and that steps have been taken to correct his route to avoid this occurring in the future.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB:mc

[fol. 960E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 53

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

1900 Lowe Street—Pittsburgh 20, Pennsylvania
Phone Walnut 2-1000

December 31, 1956.

Mr. E. H. Bergmann
Sealy Inc.
666 North Lake Shore Dr.
Chicago 11, Illinois

Dear Earl:

In reply to your letter of December 28th in reference to a West Virginia Sealy Salesman calling on an account in Livingston, Tenn. I wish to state, that while we have a West Virginia salesman, he certainly does not call on anybody in Tennessee.

As you stated, this report is rather vague but I am certain that no one from this office had anything to do with it.

Kindest regards, I am

Yours truly, Sealy Mattress Co., R. G. Culp.

RGC:kmm

[fols. 961E-962E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 601

The Sealy Board of Director's Meeting, Sealy Headquarters, Pittsburgh, Pa. Friday, November 4, 1938.

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[fol. 963E] 12. The President instructed the Corresponding Secretary to read the letter received from the Sealy Mattress Company of Philadelphia. Mr. Stein made a motion that Sealy cooperate with the Philadelphia plant, in view of their apparent sincerity, accepting their stock in part liquidation of their account, with a minimum of $100.00 per month subject to change upon notice by the Board with the understanding that a definite arrangement will be made [fols. 964E-967E] by Philadelphia for paying up its arrears. Mr. Haas seconded the motion. Voted. Approved.

13. The President stated in closing, that he felt the Board should be informed the St. Paul contract had been terminated, upon request of the St. Paul plant, and that this organization therefore was no longer part of the Sealy group.

14. The meeting adjourned.

H E Wolf, President. Jacob R. Haaz, Vice-President. Earl H Bergmann, Secretary.

Kay W. Nuiness, Corresponding Secretary.

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[fols. 968E-971E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 638

Minutes of Re convened Meeting of Sealy, Incorporated Board of Directors Held at San Souci Hotel, Miami Beach, Florida, April 7, 1954

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List of Committees

6. The list of the committee for 1954 was given to the Directors along with an outline of the functional responsibilities of each committee.

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Vigilante Service

8. Mr. Bergmann gave an outline of the vigilante service of purchasing a resale mattress from each territory for the purpose of examining these mattresses for conformity to specifications. The Board expressed themselves in favor of this program.

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[fol. 972E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 662

Minutes of the Advertising and Merchandising Committee Meeting Chicago, December 11, 1956

Present were: E. M. Wuliger, W. H. Walzer, M. A. Kaplan, E. C. Haas, Jr., C. V. Bovard, R. C. Stuart, G. C. Shappell. B. Nathanson

I—Cleveland's Merchandising Plan for Anniversary Con.sealy.beds.

Mr. Wuliger showed the Committee the extra aids Cleveland is using to help sell more Anniversary Con.sealy.beds. A special portfolio has been prepared for each salesman which contains a proof of a 5-column ad on one side and photographs of 2 step-up Anniversary Con.sealy.beds on the other.

The Committee agreed this was an excellent package but debated whether a similar idea would help other Sealy plants at this late date. Our magazine ad does not appear till late January, therefore, it was decided some plants could still use Cleveland's plan and Mr. Shappell was directed to make available the special materials to all plants. Most plants are only making one step-up so the Williamsburg will be substituted in the portfolio for Cleveland's second step-up.

The Committee asked Mr. Shappell to make certain revisions in the Cleveland ad. The name Con.sealy.bed is to be included, the $100 valuation and reference to foam rubber cushions are to be strengthened and claims for Syl-Mer are to be verified. The ad will be offered in 5 and 4-column sizes.

In conjunction with these extra sales tools Cleveland gives its dealers a plastic "sleeve" which fits over the back of the ADV. Con.sealy.bed. This does a strong selling job on the dealer's floor.

A special Syl-Mer folder is used by the salesmen and given to each dealer. It contains swatches of materials

with and without the Syl-Mer finish, making possible a comparison test of the two when water is splashed on them.

The complete program will be bulletined to the plants as soon as possible after a sample of each item is obtained from the Cleveland plant.

II—Spring Posturepedic Program.

Mr. Wuliger showed the Committee ad layouts for ideas prepared by the Cleveland and Chicago agencies. All were basically testimonials with different interpretations. A discussion ensued whether any of the ideas were strong enough and worthy of a continuous advertising program for the next year or more.

[fols. 973E-974E] Mr. Kaplan believed it would be better to feature some gimmick such as Simmon's water glass idea but stated there probably wasn't sufficient time to develop this idea for the Spring program. The Committee finally selected the Cleveland agency's theme, "My Job is a Back Breaker" as the better of the ideas presented and directed Mr. Wuliger to proceed with further development. Certain corrections were suggested. The people shown in the ads must more clearly typify the occupations they are supposed to represent and other "white collar" jobs are to be included. A closer tie-in between the main illustration and caption and reference to the Posturepedic is desirable. Mr. Wuliger will work with the Cleveland agency to make the necessary corrections and improvements in order to present the campaign to the Committee at a meeting in late December.

After the campaign has been approved, layouts for a billboard will be prepared. TV spots that tie in with the theme will also be prepared at that time.

III—1957—1958 Advertising Budget

Mr. Wuliger submitted four different plans, worked out by Weiss and Geller, for Sealy's proposed 15 month's budget (April 1, 1957 through June 30, 1958). After describing the difference in the four plans Mr. Wuliger suggested we use Alternative Plan #1 with some slight changes which he outlined.

The Committee then deliberated whether it was better to have practically all of our advertising in Life or to use some of our money for advertising in McCall's and Ladies Home Journal. The Committee tentatively agreed to run a total of 22 pages in Life during the 15 month period and four half pages in McCall's. The main reason for using McCall's is to obtain its "Use Tested" tag for Posturepedic. Committee members will discuss the plan with their agencies before the next meeting for their opinion of an all-Life campaign as compared to a campaign in several magazines.

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[fol. 975E] IV—Retail Salesman's Incentive Program for 1957

Mr. Wuliger briefly discussed the contemplated program for retail salesmen. The Committee recommended that the plants be given more information about this program immediately. Mr. Shappell was asked to prepare a bulletin spelling out the details and then submit it to Mr. Wuliger for approval.

Mr. Shappell stated he had approached John Plain (source for prizes in this campaign) about including Sealy bedding in their next catalogue and was favorably received, although no committments were made. The Committee asked Mr. Stuart to study the John Plain catalogue to help us determine the right merchandise to submit for inclusion in the 1958 book.

V—January Market

Mr. Walzer expressed his disappointment that a mailer had not been prepared to invite dealers to the Markets. Mr. Wuliger explained his reasons for not authorizing this item. During this discussion, Mr. Kaplan stated there would be four headboard sets on display at the Chicago Market and recommended we add an 837-coil Marshall unit in 3/3 size. The Committee approved and asked that specs and photos of all be sent to the plants as soon as possible. Mr. Kaplan has several ads on the 837 number which will be photostatted for use by the plants.

VI—Posturepedic Acetate Folders

The Committee decided to stop work on this item until the theme for the Spring Posturepedic campaign has been developed. Mr. Wuliger had suggested a special chart showing various workers susceptible to backache be placed on the dealer's floor as part of the Spring program. The folder may be revised to tie in with this piece.

In the meantime, Mr. Stuart was asked to take the Acetate Folder into the field to determine its value and then submit his findings to the Committee.

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[fol. 976E] VIII—Plans for 1957 Holiday Special Promotion

While discussing this subject it was revealed that Victor Borge had a Rock Cornish Hen farm in Connecticut. The Committee liked the possibility of using the Cornish hens in this promotion tied in with Victor Borge for extra consumer and dealer interest. Newspaper ad layouts will be prepared in the near future along these lines. Customers will be given their choice of the hens or a turkey.

Mr. Shappell had suggested the use of 7-inch plastic records during the Spring Posturepedic campaign. These have been used very successfully by many companies, including the United Fruit Company, for bananas. Mr. Shappell will contact Mr. Borge about the possibility of his making a record to promote the Holiday Special—Rock Cornish Hen program. Two records would be required—one to include in a mailer to dealers and the other to give to all customers who buy the Holiday Special combination.

IX—Review of Old Television Films

The Committee viewed three old TV films which have come up for renewal of re-use fees. These commercials are the Posturepedic Innerspring (Doctor), Posturepedic Foam Rubber and Con.sealy.bed films. The Committee agreed these were still good films and should be renewed at the approximate cost of $5500.00.

Mr. Shappell was directed to bulletin the plants with a complete list of TV films available from Sealy, Inc. A description of each film should be given.

[fol. 977E] X—Ten-Second Television Commercials

The question was raised whether the Chicago plant should be billed by Weiss & Geller for 10-second TV spots or should Sealy, Inc. pay for them. Chicago has been the only plant regularly using 10-second spots.

Mr. Kaplan pointed out his plant would not need all commercials in 10-second form but would like the opportunity, every so often, to have a new film. Mr. Shappell stated Detroit and Pittsburgh had recently requested 10-second films.

The Committee decided Sealy, Inc. should bear the cost of 10-second TV spots. In the future, after 55-second spots have been prepared, Mr. Kaplan is to be shown the film for him to determine whether or not he wishes a 10-second version of that commercial.

XI—Next Meeting of the Advertising Committee

Another meeting is needed soon to finalize plans for Spring Posturepedic and develop the program for the 1957 Golden Sleep.

It was decided to have the meeting Friday, December 21st or Friday, December 28th, depending on the availability of Mr. Kaplan. Mr. Shappell will contact Mr. Kaplan on the 17th and then wire each Committee member the date of the meeting. It will be held in Chicago.

Sealy, Incorporated, Gerald C. Shappell.

GCS/my

[fol. 978E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 664

Minutes of the Advertising and Merchandising Committee Meeting New York, January 26, 1957

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The meeting was devoted to discussing specific elements of two forthcoming promotions. These minutes consist of a listing of the elements with decisions and recommendations made for each.

I—Spring Posturepedic Campaign

1. *Life Ads*—black and white pages (all bleed).

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2. *Newspaper ads* . . . not discussed.
3. *24-Sheet Poster*—new layout using same figures shown on opening Life ad. Reduce number of words in headline. Add Bareback Girl.
4. *Window Streamer*—duplicating 24-sheet Poster.
5. *Window Display*—adapt display (now in layout form) which uses moulded plastic medicine bottle. Small posters in display perhaps can duplicate six illustrations used in Life ads, with reference to "No More Morning Backache," etc.
6. *Display Miniatures*—for Sealy salesmen.

[fol. 979E] 7. *Salesman's Portfolio*—Agency to submit 3-ring Portfolio using hard binder, featuring Life Magazine cover. Each of six Life ads will be shown on separate pages plus display material and all advertising material to be prepared for promotional bedding. Binder can be smaller than that used during the last Spring Posturepedic campaign and should cost about $25 each.

8. *Record* . . . not discussed at meeting but agency is preparing script.

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II—Golden Sleep Promotion

1. Four Life Ads

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[fol. 980E] 2. *Headboards*—E. Wuliger, W. Walzer and M. Kaplan to work with local sources for various styles and prices.

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[fol. 981E] 3. *House Beautiful*—black and white page ad on Enchanted Nights at $59.50. Insertion date not decided although Mr. Wuliger stated it should be run as soon as possible.

4. *House and Garden 4-color Ad*—on Golden Sleep Con.sealy.bed in August issue.

   a. Bill Marbaugh to submit styles and fabrics to E. Wuliger and M. Kaplan on Friday, February 1st—2 styles ADV and Step-up.

5. *Labels*—

   a. Enchanted Nights and Enchanted Nights De-Luxe—with and without prices.
   b. Twin bed ensembles—without prices. Give name to each ensemble—names should be short and of a similar nature.

6. *Window Display*—

   G. C. Shappell will look into previous suggested displays with sign which traveled back and forth across window. (Miniatures will be needed).

7. *Window Tube*—necessary.

[fol. 982E] 8. *Promotional Guide*

Piece similar to that used in Anniversary. Plan on 4500 costing $2.50 each (at most $3.00). Plants will be sold copies for salesmen at $30 each; additional copies $1.25 each. Plants cannot buy items at $1.25 unless they purchase quantity at $3.00.

9. *Planning Guide*

Prepare in file folder form as Anniversary.

10. *ASTB Card*

Repeat idea used in Anniversary.

11. *Consumer Mailer—regular sale—*

a. Repeat triple post card as used in 74th Anniversary—as insert and self mailer.
b. Low priced insert—lightweight paper in color on one side only—blank on reverse so stores can print additional message if it is desired.

12. *Consumer Mailer—private sale—*

a. Letter with Sealy Mattress Company letterhead in black and white. Print letters only; submit return post card in form so plants and dealers can prepare locally. See if swatch can be sized to appear heavier than actual material.
b. Statement enclosure again as idea—plants do locally.
c. Post card as idea—to be done locally by plants.
d. House Beautiful ad on $59.50 Enchanted Nights overprinted in red with message on Private offering.

13. *Newspaper Ads*—many variations as possible. One ad should show House Beautiful $59.50 ad in miniature.

[fol. 983E] III—Spring Discount Sale

The Committee first recommended this 25% Off Discount Sale be restricted to local handling during Spring 1957. After further discussion the Committee decided to hold the entire plan for a national event during Spring 1958. It would be sold to the dealers at the January Market and be on the dealers' floor starting Monday. April 7th.

IV—1958 Anniversary Window Display

While discussing displays for GoldenSleep a suggestion was made that we repeat the swivel light display used in the 1956 Golden Sleep. The Committee agreed it would be better to use this display during the Anniversary because of the early darkness. We will discuss this idea when making plans for our 1958 Anniversary.

V—Meeting Dates

The Committee set February 20th as the date for the meeting to give the Spring Posturepedic Program to the licensees.

There will be a meeting of the Advertising Committee on the following day, February 21st.

GCS/my

[fol. 984E] In United States District Court

Government's Exhibit No. 741

666 Lake Shore Drive
Chicago 11, Illinois

Bulletin: Number SP-10, May 29th 1952
Subject: Resume of Royalty Payments
To: All Sealy Licensees

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[fol. 985E] This office is not an instigator of general policy, but is charged with the responsibility of carrying out the instructions of the board of directors as directed.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL:ht

[fol. 986E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 753

Bulletin: SP-19, May 28, 1954
Subject: Programs of Procedure Approved and Adopted by the Board of Directors
To: All Sealy Licensees

Problem

The developing of a program to be used in a positive approach toward developing sales to national, regional chains or groups who purchase through a single office; and a program of procedure where sales to groups are spilling over to territories exclusively assigned to contiguous Sealy licensees.

Background

1. The Sealy Contract prevents any licensee selling where *he knows* or *has reason to know* that the product will be re-sold in another territory.
2. Chief problems:

   A. Danger of antagonizing customers of a participating licensee.
   B. Different methods of merchandising between groups and other customers.
   C. Interference with individual licensees who grant exclusive dealers in certain towns.

Area of Agreement

1. The answer must be by *voluntary action* of licensees in the area affected.
2. Initiative of the proposed program should come from the affected licensees.
3. The national Sealy office shall encourage by gathering necessary information, setting standards of advertising, merchandising, and by acting generally as mediator and counciliator between affected licensees.

Programs

Programs recommended by a special committee consisting of Jos. F. Haas, legal counsel, as Chairman, and Messrs. M. A. Kaplan and H. B. Fouts, I. L. Fisher, H. L. Howard, E. J. Kligman, M. H. Yulman, and E. C. Haas, Sr. appointed for the purpose of considering the exclusive sales feature of the Sealy contracts as covered by Section IV.

Section IV-A and Section IV-B which were adopted and approved by the Board of Directors on April 5, 1954 are as follows:

[fol. 987E] A. Program of Sales Procedure With Buying Groups or Multiple Store Ownerships Which Embrace Several Sealy Plants:

1. When a licensee learns of a buying group in his area, he should get as much information as possible and forward it to the Sealy national office with copies to all licensees who would be affected.
2. The affected licensee shall notify the national Sealy office of their reaction.
3. The national Sealy office shall round out the information and set a date for a meeting of the affected licensees.
4. At the meeting, Sealy's Executive Officers and the affected Licensees shall work toward a satisfactory arrangement modeled after previously successful arrangements, or any other feasible arrangement which the affected licensees are willing to adopt.
5. If an agreement is reached, it shall be reduced to writing and signed by all affected, expressly protecting against any actual change in the Sealy licensee contract. This will avoid any misunderstanding, but will clearly indicate that the agreement is applicable only to the single transaction involved.
6. If no agreement can be reached between the affected licensees and the Executive Officers of Sealy, Inc., the matter shall be referred to the Executive Committee for official consideration. Should a member of the Executive Committee be one of the affected licensees, he shall not sit on the committee, but the other members of the Executive Committee shall appoint a

new member from the Board to sit in place of the affected member.

7. Over a period of time it is hoped that precedence will be developed which will aid greatly in solving other similar situations.

B. Program of Procedure Where Sealy Merchandise Originally Sold by one Sealy Licensee is Found to be Entering the Territory of a Contiguous Sealy Licensee:

[fol. 988E] 1. A licensee who feels that he is being damaged or injured by another licensee, shall first take up the matter directly with such other licensee for the purpose of attempting, in a neighborly fashion, to arrive at a satisfactory conclusion, sending copies of all correspondence to the national Executive office.

2. If a satisfactory conclusion is reached by the contiguous plants, a copy of this agreement shall be forwarded to the executive offices of Sealy, Inc. for the purpose of approval and to become a matter of permanent record. A copy of this agreement would be retained by each of the contiguous factories.

3. If the affected licensees are unable to solve the problem to their mutual satisfaction, the Executive officers of Sealy, Inc. shall be called upon to determine the controversy.

4. The chief Executive Officer shall make a ruling on the controversy.

5. The affected licensees would then have the right to appeal the decision of the President to the regular grievance committee of the Board.

6. The grievance committee shall consider the decision and make its recommendations to the Board, which thereupon makes its decision, which would be final.

Very truly yours, Sealy, Incorporated, E. H. Bergmann

EHB/rl

GOVERNMENT'S EXHIBIT No. 777

[fol. 989E] IN UNITED STATES DISTRICT COURT

666 Lake Shore Drive
Chicago 11, Illinois

Confidential to Sealy Personnel.
Action Required

Bulletin: Number 22, February 17, 1956
Subject: Specification and Cost Committees for 1956
To: All Sealy Plants

Gentlemen:

The national office is asking for volunteers who will serve on these committees and who will *really Work.*

These committees should provide much broader service than in the past, and that is being said without criticism of any past committees.

The specifications for the resale line are in sad need of a complete review and overhaul. I am asking for a volunteer committee of three directors to serve as a Specification Committee, with the understanding that they will give full and complete attention not only to specifications for the resale line but also to any and all other bedding specifications required in our national work. Only the Board of Directors Will Have Power to Veto or Alter Specifications Approved by This Committee.

Cost knowledge on bedding in the national office has left much to be desired in the past. This office requires adequate cost information, not only for its proper guidance but for that of all the plants as well.

Each plant owner is requested to determine whether he wishes to work on this committee, or possibly he may have someone on his staff who could devote the necessary time required by a real cost committee. Please advise this office prior to March 1 if you have any suggestions.

In conclusion I want to stress once more that these committees will be expected to Work.

Very truly yours, Sealy, Incorporated, E. H. Bergmann.

EHB/kt

[fol. 990E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 816

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

Cleveland 15, Ohio
Telephone Vulcan 3-0444
284 East 37th Street

February 11, 1953.

Mr. E. H. Bergmann
Sealy, Incorporated
2012 West 25th St.
United Office Bldg., Room 418
Cleveland 13, Ohio

Dear Mr. Bergmann:

Our salesman in the Dover and New Philadelphia area advises that they are getting radio broadcasts sponsored by the Reichart Furniture Company of Wheeling, W. Va., and Youngstown, Ohio, advertising the Sealy Posturepedic and offering a $5.00 trade-in allowance.

Some of our dealers are quite disturbed about this, so would appreciate your checking into it.

Sincerely, Sealy Mattress Company, Ernest M. Wuliger.

EMW:HR

[fol. 991E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 817

SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

New Address is:

Lowe & McKnight Sts.
West End, Pittsburgh 20, Pa.
Pittsburgh 22, Pennsylvania
Telephone Atlantic 1-7451
2110 Penn Avenue

February 18, 1953.

Mr. Earl Bergmann
c/o Sealy Inc.
2012 West 25th Street
Room 1418 - United Office Bldg.
Cleveland 13, Pa.

Dear Earl:

I followed up your 'phone call of yesterday and contacted the Reichart Furniture Company in Wheeling, West Virginia. I spoke to the owner, Robert Levenson, and he emphatically denied advertising the Posturepedic on radio with a $5.00 trade-in allowance. He double checked with his advertising department and I overheard his conversation with his advertising manager. I believe he is telling the truth.

I have 'phone the Cooey-Bentz Company who I told you had advertised in the newspaper with the $5.00 trade-in allowance. They had already been cautioned not to repeat that type of advertising, but I thought possibly that they were repeating it on radio. *They* also denied such radio advertising and profusely apologized for having run the newspaper ad.

I don't know where Ernest Wuliger got his information. I 'phoned him too, but he is in Chicago until Friday.

I would like to track this down, Earl, and if you get any further word on it I would appreciate your letting me know.

Yours very truly, Sealy Mattress Sales Co., H. F. Kaufman.

HFK/jb

[fol. 992E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 877

SEALY OF THE CAROLINAS

Sleeping on a Sealy is like sleeping on a cloud

Lexington, N. C.
Telephone 3572

May 4, 1956.

Sealy, Incorporated
666 North Lake Shore Drive
Chicago 11, Illinois

Attention: Mr. E. H. Bergmann

Dear Mr. Bergmann:

Several weeks ago, one of our principal customers of Fayetteville, North Carolina, complained to us that the Military Personnel Buying Agency of Spring Lake, North Carolina, which is on the Fort Bragg side of Fayetteville, was offering Posturepedic Foam Rubber outfits at $119.50.

Our Fayetteville customer was under the impression that this concern was buying the merchandise from another customer of ours located at Southern Pines, North Carolina. This was untrue.

Our sales representative was in Fayetteville on Thursday of this week and he took it upon himself to telephone the Military Personnel Buying Agency, inquiring as to whether they had any mattresses to sell and they told him that they offered Sealy only. He then inquired as to whether they had the Posturepedic Foam Rubber mattress and they said that they did and that they offered it at $119.50 f.o.b. Washington, D. C.

Quite obviously, therefore, they are having this merchandise transferred to them from some similar outfit in Washington, D. C.

We hardly know how to approach this matter except through you. This competition is, however, destructive of

our Fayetteville, North Carolina, effort. Will you please take whatever action is necessary and advise.

With kind personal regards.

Yours very truly, Sealy of the Carolinas, J. V. Moffitt, Jr.

JVMjr/eg

[fol. 993E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 878

May 8, 1956.

Mr. J. V. Moffitt, Jr.
Sealy Mattress Company
Lexington, North Carolina

Dear Joe:

This acknowledges receipt of your letter of May 4 relative to the difficulty you have had with the Military Personnel Buying Agency of Spring Lake, North Carolina.

Undoubtedly this merchandise is coming out of one of the many discount houses located in the District of Columbia where there are no fair trade laws. The District of Columbia is a haven for the price cutters of America. These price cutters are a headache to Mr. Rudick of the Baltimore plant and he has been doing a masterful job in trying to control them.

A copy of this letter and a photostatic copy of your letter will be sent to Mr. Rudick asking him to report his findings to you and the steps he is taking to eliminate the situation in his territory.

Very truly yours, Sealy, Incorporated, E. H. Bergmann

EHB:lp

cc—J. R. Rudick

[fol. 994E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 932

Minutes of Executive Committee Meeting . . . William Penn Hotel Pittsburgh, Pa. — 12/14/36.

The President opened the meeting by instructing the Corresponding Secretary to read the minutes of the Chicago Executive Committee Meeting.

Mr. Haas stated that he would like an opportunity to make a survey of South and North Carolina, and then determine whether he would relinquish the territory instead of giving it up as agreed at the previous meeting. Mr. Bergman stated that the only basis on which the territorial situation could be worked out, in all fairness to Sealy, Incorporated, was to set up a fair royalty return from each territory and demand that any factory working that territory, either by warehouse or direct contact, live up to the expected returns or else yield the said territory to Sealy, Incorporated for licensing. Mr. Haas repeated that he did not want to bind himself definitely by the agreement contained in the previous minutes, but that he would do the fair thing by Sealy, and if his survey revealed that he would be unable to assure as large a return for Sealy, Incorporated as a direct licensee in that territory he would yield South and North Carolina as previously agreed.

Mr. Haas then made a motion that the Minutes be accepted as read and Mr. Bergman seconded the motion. Approved.

The corresponding Secretary next read the contract, prepared by Mr. Lester Wolf, to be in effect between Sealy, Incorporated and Messrs. Brody and Englehardt, copy of which is attached hereto. Mr. Haas questioned Paragraph 10 dealing with the establishment of a Sealy space in the Furniture Mart, stating that he felt this should be established just as soon as Brody and Englehardt's salary reaches a point that would justify its upkeep, however, [fol. 995E] he did not believe that any certain figure should be specified as controlling the rental of this space. It was Mr. Haas' recommendation that any set figure be

omitted and the words "as mutually agreed" substituted therefor.

Mr. Bergman made a motion that the contract be placed in effect as written, dated November 1st, 1936, with the single change suggested by Mr. Haas. Mr. Haas seconded the motion. Approved.

The Corresponding Secretary read the New Manufacturers' Contract, also the Installment Stock Purchase Contract, copies of which are attached hereto. Mr. Haas made a motion that both these contracts be accepted as written, and that Mr. Wolf be given authority to sign these agreements with new licensees and attach the corporate seal, attested by the Assistant Secretary. Mr. Bergman seconded the motion. Approved.

The Secretary read the various papers dealing with the purchase of Sealy stock from Earl E. Edwards and the Southern Commercial Corporation, namely, the form of the notes to be executed, form of release, et cetera, copies of which are attached, and Mr. Bergman moved the passage of the following resolution:

"Resolved that the President and Assistant Secretary of Sealy, Incorporated be and they are hereby authorized to execute and deliver, and for that purpose to affix the corporate seal, to E. E. Edwards the corporation's note in the sum of $9,750.00 dated December 19, 1936, payable in sixty (60) monthly installments of $162.50 each, the first of which installments shall be due and payable on January 1, 1937, with interest thereon from maturity at the rate of six per cent per annum, said note being substantially in the form of the copy attached to this resolution, which said note is delivered in consideration of the endorsement and transfer by the said E. E. Edwards to Sealy, Incorporated [fol. 996E] of 325 shares of stock of Sealy, Incorporated to said corporation and the execution and delivery by the said E. E. Edwards to Sealy, Incorporated of a release and quitclaim of all of his right, interest and claim in and to the name, trade-mark and trade name "Sealy" and any patents or copyrights owned, used or registered in the name of Sealy, Incorporated."

Motion seconded by Mr. Haas. Approved.

Mr. Bergman then moved the passage of the following resolution:

"Be It Further Resolved that the President and Assistant Secretary of Sealy, Incorporated be and they are hereby authorized to execute and deliver, and for that purpose to affix the corporate seal, to Southern Commercial Corporation, the corporation's note in the sum of $7,620.00 dated December 19, 1936, payable in monthly installments of $127.00 each, the first of which installments shall be due and payable on January 1, 1937, with interest thereon from maturity at the rate of six per cent per annum, said note being substantially in the form of the copy attached to this resolution, which said note is delivered in consideration of the endorsement and transfer by the said Southern Commercial Corporation to Sealy, Incorporated of 254 shares of stock of Sealy, Incorporated to said corporation and the execution and delivery by the said Southern Commercial Corporation to Sealy, Incorporated of a release and quitclaim of all of its right, interest and claim in and to the name, trade-mark and trade name "Sealy" and any patents or copyrights owned, used or registered in the name of Sealy, Incorporated."

Motion seconded by Mr. Haas. Approved.

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[fol. 997E] Mr. Haas made a motion that an immediate trademark search be made, covering the ten standard Sealy names, and that these ten labels by copyrighted just as soon as the new labels became available. Motion seconded by Mr. Bergmann. Approved.

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[fol. 998E] Territorial set-ups were discussed, particularly the requirements of two licensee prospects the Acme Mattress Company of Indianapolis, Indiana and the Dodge-Dickinson Company of Bloomington, Illinois. Mr. Haas outlined the Indiana territory which he was willing to relinquish, also part of his Kentucky territory. Mr. Haas stated that he was unable to say what they could do about Illinois but would make a check, immediately on his return to the office, and advise what they could relinquish in that state.

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[fol. 999E] In United States District Court

Government's Exhibit No. 933

Minutes of Executive Committee Meeting Stevens Hotel, Chicago, January 7th — 1937.

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[fol. 1000E] Mr. Haas moved that a check be made as to whether the "Little Darling" name was trademarked by Sealy for crib mattresses, and if no such trademark exists that we proceed with the necessary search and trademarking. Mr. Wolf seconded the motion. Approved.

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The Corresponding Secretary next read the suggested Committee appointments. Mr. Haas moved that these be accepted as read. Mr. Bergman seconded the motion. Approved.

H. E. Wolf President. Jacob R. Haas, Vice-President. Earl H. Bergmann, Secretary.

[fol. 1001E] Advertising Advisory Committee

(1) Paul Andre
(2) Wm. W. Llewellyn
(3) J.R. Haas
(4) Harry Olson
(5) Philip C. Handerson
(6) Earl Bergman

Engineering Committee

(1) Harry E. Wolf
(2) H.C. Hasselbarth
(3) Max Marsack
(4) W.H. Greenwalt
(5) M. Nierenberg

Styling Committee

(1) Mrs. V.C. Weisenberger
(2) Kay W. Ninness
(3) Marc Hoffman
(4) Morris Stein
(5) Seniel Ostrow
(6) Frank Wuliger

Merchandising Committee

(1) Edgar Haas, Chairman
(2) F.G. Weisenberger
(3) Monroe Dodge
(4) Chas. H. Friedberg
(5) Murray Abrams

Cost & Acct. Practice Committee

(1) Paul Fehr
(2) Earl Bergman
(3) Marc Hoffman
(4) Walter Notman
(5) Robert Culp

Purchasing Committee

(1) Frank Wuliger
(2) J.R. Haas
(3) Max Marsack
(4) Harold Balyeat
(5) M.P. Cady

[fols. 1002E-1003E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 934

Minutes of Board of Directors Meeting Stevens Hotel — Chicago January 8th, 1937.

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The President outlined the proposed Committee set-ups recommended by the Executive Committee. Mr. Stein made a motion that the selection of Committees be left entirely in the hands of the President. Mr. Haas seconded the motion. Voted. Approved.

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[fol. 1004E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 937

Minutes of the Board of Directors Meeting, Palmer House, Chicago, June 30th, July 1st, 1937.

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[fol. 1005E] The President announced that Mr. Leguillon and Mr. Seitz of the B. F. Goodrich Company had a few words to say to the Board. Mr. Leguillon told the Board that he had experienced considerable difficulty, in having Sealy mentioned as frequently as he would have liked to, in Goodrich advertising because Sealy does not have proper national distribution. Mr. Leguillon stated that the greatest weakness existed in the South, New England, Chicago, and Detroit. Mr. Leguillon urged the Board to correct this situation. Mr. Seitz supplemented Mr. Leguillon's remarks on the subject, adding that an extensive field between Denver and California was also being neglected. Mr. Leguillon and Mr. Seitz left.

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[fol. 1006E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 938.

Minutes of the Stockholders Meeting of Sealy, Incorporated, Palmer House, Chicago, July 2nd and 3rd, 1937.

The President opened the meeting with a welcome to the members. The following representatives (by proxy) of stockholders were present: H. E. Wolf for H. E. Wolf, Fort Pitt Bedding Company. The Land O'Nod Company, and the Fred. G. Hodges Bedding Company. Mr. E. J. Cunningham for C. O. Hasselbarth, Inc., Harold Balyeat for the Acme Mattress Company, Earl Bergmann for William H. Rosenfeld, Morton Walzer for the Waterbury Mattress Company, Morris Stein for the Sealy Mattress Company of Oregon, William W. Llewellyn, Jr. for Ingraham Manufacturing Company, J. R. Haas for the U.S. Bedding Company.

Also present were the following representatives of stockholders: Mr. Morris Stein for M. Stein and M. Nierenberg, Denver, Seniel Ostrow for the Valley Bedding & Furniture Co., Charles Friedberg for the Southwest Sealy Corporation, Edgar Haas for the Sealy Mattress Company, Texas, W. J. Notman for Otis-Buffalo, Inc., Harold Balyeat for the Balyeat Manufacturing Co., Murray Abrams for the Divan Corp. of America, Max Marsack for the Li-on Bedding Co., H. M. Dodge for the Dodge-Dickinson Company.

Others in attendance were: Mr. Joe Rogers, Mr. John M. Brody, Jr., Mr. Lester Wolf, and Mr. Robert Culp.

The President instructed the Secretary to read the Minutes. Mr. Friedberg made a motion that the Minutes be accepted as read. Mr. Abrams seconded the motion. Approved.

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[fol. 1007E] Mr. J. R. Haas explained why the term "royalty" is in error, as applied to the operation of Sealy, Incorporated, since it is actually nothing other than a cooperative advertising effort, Sealy being a non-profit organization. Mr. Stein supplemented Mr. J. R. Haas's remarks.

[fol. 1008E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 939

12-6-37

ALPHABETICAL LIST OF STOCKHOLDERS

of

Office with Corporation Service Company
Wilmington, Delaware

This list should be prepared and posted at the place where the meeting is to be held, ten days prior thereto, open to examination of any stockholder.

It must be produced and kept at the time and place of election of directors, open to inspection of stockholders. Failure to do this renders directors ineligible to re-election.

After election, keep this list with your records.

Name:

Acme Mattress Co.
Balyeat Manufacturing Co.
C.O. Hasselbarth, Inc.
Dodge-Dickinson Co.
Fort Pitt Bedding Co.
Fred G. Hodges Bedding Co.
Ingraham Mfg. Co.
Land-O-Nod Co.
Li-On Bedding Co.
Otis-Buffalo, Inc.
Rosenfeld, William H.
Sealy Mattress Co., Houston, Texas
Sealy Mattress Co. of Oregon
Stein, M. & Nierenberg, N.
Southwest Sealy Corp., Kansas City
U.S. Bedding Co., Memphis
Valley Bedding & Furniture Co.
Waterbury Mattress Co.
Wolf, H.E.

[fol. 1009E] Sealy Annual Meeting Palmer House, Chicago, Illinois Board of Directors—December 7, 1937.

(1) The Vice-President called the meeting to order. The following Directors were present: Mr. J.R. Haas, Mr. Earl H. Bergmann, Mr. Seniel Ostrow, Mr. Charles Friedberg, Mr. Morris Stein, Mr. Harold Balyeat, Mr. Jos. Rogers, and the following other persons, Mr. E.J. Cunningham, Mr. M. Nierenberg, Mr. Robert G. Culp, Mr. Lester Wolf, Mr. W. Guy Mankey, Mr. John M. Brody, Jr., and Mr. Wallace H. Englehardt.

(2) The first order of business was the election of Officers. Mr. Bergmann moved that Mr. HarryE.Wolf be re-elected as President. Mr. Stein seconded the motion. Voted. Unanimously approved.

(3) Mr. Stein moved that Mr. J. R. Haas be re-elected as Vice-President. Mr. Jos. Rogers seconded the motion. Voted. Unanimously approved.

(4) Mr. Friedberg moved that Mr. Earl Bergmann be re-elected as Secretary. Mr. J.R. Haas seconded the motion. Voted. Approved.

(5) Mr. Stein nominated Mr. Stein for Treasurer. Mr. Friedberg seconded the motion. Voted. Unanimously approved.

(6) Mr. Rogers nominated Mr. R.G. Culp for Assistant Secretary-Treasurer. Mr. Ostrow seconded the motion. Voted. Unanimously approved.

(7) The Vice-President read an outline of the duties and powers of the Executive Committee and stated that the said Committee should consist of two or more Directors. Mr. Friedberg moved that the Executive Committee be [fol. 1010E] augmented by at least one member during Mr. Wolf's illness and nominated Mr. Stein to serve on that Committee until such time as Mr. Wolf is able to resume active service. Mr. Ostrow seconded the motion. Voted and unanimously approved.

(8) Mr. Friedberg made a motion to change the last action so that the Executive Committee for the year 1938 should consist of the following: Mr. Harry E. Wolf, Mr. J.R. Haas, Mr. Earl H. Bergmann, and Mr. Morris Stein. Mr. Rogers seconded the motion. Voted. Unanimously approved. The Secretary was instructed to cast a vote for the following to constitute the Sealy Executive Committee for 1938—Mr. Harry E. Wolf, Mr. J. R. Haas, Mr. Earl H. Bergmann, and Mr. Morris Stein. The ballot was so cast.

(9) Mr. Ostrow made a motion that the Executive Committee serve for a period of one year or until its successors are elected. Mr. Bergmann seconded the motion. Voted. Unanimously approved.

(10) Mr. Friedberg questioned Mr. Lester Wolf as to whether the Executive Committee has the power to reverse an action of the Board of Directors. Mr. Lester Wolf replied that the Executive Committee does not have this power.

(11) Mr. Friedberg made a motion that the Executive Committee be vested with all of the powers of the Board of Directors, between meetings of the Board, with respect to the business and property of the Corporation, with the exception that it should not have the power to amend the By-Laws of the Corporation or fill vacancies on the Committee or on the Board of Directors.

[fol. 1011E] Mr. Ostrow seconded the motion. Voted. Approved unanimously.

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[fol. 1012E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 940

Sealy Stockholders Meeting Palmer House, Chicago, Illinois December 7, 1937.

. . . . . .

(4) Proxies were also placed on file by Otis-Buffalo, Incorporated for W.J. Notman who, unfortunately, was [fols. 1013E-1016E] not present, and by H.C. Hasselbarth, Incorporated for H.C. Hasselbarth, with Mr. Cunningham the only one present from this organization.

. . . . . .

[fols. 1017E–1019E] Sealy, Incorporated Profits & Loss Statement for Period of July 1 1937 to December 1, 1937

Income			
Royalties from July 1st to December 1st, 1937		$25,659.60	
Plus Discount Earned		200.21	
			$25,859.81
Less			
Ticking Purchase		86.98	
Promotional Expense			
Advertising	$13,424.50		
Chicago Exhibit Expense	1,013.64		
Freight and Expressage	4.34		
John M. Brody, Jr.	2,880.00		
Wallace H. Englehardt	2,880.00		
		20,202.48	
Administrative Expense			
Legal Expense	225.00		
Patent Expense	912.49		
Printing and Stationery	180.79		
Postage	190.25		
Telephone and Telegraph	284.55		
Traveling Expense	1,297.95		
Rent Account	250.00		
	3,341.03		
Salaries			
E. H. Bergmann	110.00		
R. G. Culp	280.00		
C. De Fries	350.00		
J. R. Haas	70.00		
J. Hughes	292.50		
K. Ninness	1,000.00		
B. Vogel	500.00		
H. E. Wolf	441.00		
	3,043.50		
Delaware Office Expense	50.00	6,434.53	
Other Expenses			
Trade Marks and Patent Expense	102.75		
Experimental Expense	396.00		
Interest Paid	55.00		
Old Age Benefits Tax	30.44		
Federal Capital Stock Tax 1937	102.00		
Federal Income Tax 1937	344.83		
Penna., State Income Tax 1937	198.03		
Unemployment Tax	170.28	1,399.33	
Divan Corporation Loss	66.68	1,466.01	
Total Expense			28,190.00
Loss			2,330.19
Gain from Sale of Stock			1,400.00
Loss to December 1, 1937			930.19

* * * * * * *

[Vol. 1020E] Record of Sealy, Incorporated Stockholders as of December 1, 1937

Certificate #1	Cancelled	
#2	Cancelled	
#3	Cancelled	
#4	Cancelled	
#5	Sealy Mattress Company of Oregon	136 shares
#6	M. Stein & N. Nierenberg	85
#7	William H. Rosenfeld	77
#8	H. E. Wolf	50
#9	Fort Pitt Bedding Co.	150
#10	Valley Bedding & Furniture Co.	50
#11	U. S. Bedding Co., Memphis	313
#12	Southwest Sealy Corp., Kansas City	10
#13	Sealy Mattress Co., Houston, Texas	50
#14	Cancelled	
#15	C O. Hasselbarth, Inc.	2
#16	Acme Mattress Co.	2
#17	Otis-Buffalo, Inc.	2
#18	Balyeat Manufacturing Co.	2
#19	Divan Corporation	2
#20	Ingraham Manufacturing Co.	2
#21	Li-On Bedding Co.	2
#22	Land-O-Nod Co.	2
#23	Cancelled	
#24	Dodge-Dickinson Co.	2
#25	Cancelled	
#26	Waterbury Mattress Co.	2
#27	Cancelled	
#28	Fred G. Hodges Bedding Co.	2
#29	Cancelled	
#30	Balyeat Manufacturing Co.	3
#31	C. O. Hasselbarth, Inc.	3
#32	Ingraham Manufacturing Co.	3
#33	Li-On Bedding Co.	3
#34	Sealy Mattress Co., Houston, Texas	2
#35	Cancelled	
#36	Acme Mattress Co.	3
#37	Cancelled	
#38	Cancelled	
#39	Waterbury Mattress Co.	3
#40	Sealy, Incorporated	537
		1,500

[fol. 1021E] Recapitulation of Stock Shares

Sealy Mattress Co. of Oregon	136
M. Stein & N. Nierenberg	85
William H. Rosenfeld	77
H. E. Wolf	50
Fort Pitt Bedding Co.	150
Valley Bedding & Furniture Co.	50
U. S. Bedding Co., Memphis	313
Southwest Sealy Corp., Kansas City	10
Sealy Mattress Co., Houston, Texas	52
C. O. Hasselbarth, Inc.	5
Acme Mattress Co.	5
Otis-Buffalo, Inc.	2
Balyeat Manufacturing Co.	5
Divan Corporation	2
Ingraham Manufacturing Co.	5
Li-On Bedding Co.	5
Land-O-Nod Co.	2
Dodge-Dickinson Co.	2
Waterbury Mattress Co.	5
Fred G. Hodges Bedding Co.	2
Sealy, Incorporated	537
	1,500

[fols. 1022E-1024E] In United States District Court

Government's Exhibit No. 941

Minutes of Executive Committee Meeting, Hotel George Washington, W. Palm Beach, Fla., February 21, 22—1938.

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[fols. 1025E-1027E] 20-c. The Memphis territory was discussed, and Mr. Haas stated that he would know within ninety days whether he prefers working North and South Carolina and part of Georgia, or whether he will relinquish this territory to Sealy, Incorporated.

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[fol. 1028E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 946

Minutes of the Semi-Annual Meeting of Members and Stockholders of Sealy, Incorporated, Held Pursuant to Notices Duly Mailed.

Wednesday July 2, 1941 at the Congress Hotel Chicago, Illinois.

. . . . . .

5. At the request of Mr. Bergmann, Mr. Brody presented to the membrs the recommendations of Sealy, Inc. of uniformity nationally in merchandising and advertising endeavours and stressed the real necessity of evry Sealy manufacturer and salesman absolute compliance with the regulations of the Federal Trade Commission, in regard to unfair trade practises as applied tonadvertising, product labels and merchandise representations. Mr. Brody stated the emphatic position of the Federal Trade Commission so far as uniform specifications and uniform merchandise nationally branded and advertised is concerned.

. . . . . .

[fols. 1029E-1030E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 950

Proceedings of Licensee Meeting, Sealy Inc. Held at Palmer House Chicago, November 28th, 1942.

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Mr. Haas spoke on the satisfactory progress of Sealy in 1942 in building and merchandising in the profit brackets and in establishing and maintaining trade marks. All this made possible an augmented advertising program for 1943. He also explained the difficulties in buying cotton of the right grades and the complications on account of requiring non compressed cotton for the Sealy Tuftless. He recommended buying ahead on this item also ticking because that situation might become extremely critical. He also pointed out that this was definitely a class market and that already we were selling more Sealy Tuftless than we had Sealy Rest.

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[fol. 1031] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 951

Minutes of the Meeting of the Licensses of Sealy Incorporated Held at the Chicagoan Hotel, December 4th, 1943.

1. Meeting called to order at 10:30 A.M. by E. H. Bergmann.

2. Roll call showed the following present:

I. A. Wiener	representing	Allston
J. L. Metcalfe	"	Bluefield
Max Kligman	"	Brooklyn
Morris Kaplan	"	Chicago
Herbert N. Neilson	"	Cincinnati
Earl H. Bergmann	"	Cleveland
Chas. Lippan	"	Dallas
Morris Stein	"	Denver
H. N. Ryden	"	Des Moines
Conrad Osiason	"	Fall River
R. S. Rogers	"	Houston
J. R. Waldstein	"	Kansas City
Seniel Ostrow	"	Los Angeles, Fresno & Oakland
J. R. Haas	"	Memphis
R. W. Marquardt	"	Milwaukee
M. Lewis	"	Passaic
Samuel Hertz	"	Passaic
R. G. Culp	"	Pittsburgh
Arthur H. Raasch	"	Portland
T. C. Engelhardt	"	Reading
Sydney Sutherland	"	Richmond
Lawrence Simmerman	"	East Point
John M. Brody, Jr.		
W. J. Craig		
Wm. Hoffman		
M. Selhourn		

3. Mr. Brody outlined briefly merchandising plans in the advertising program. The chairman thanked Mr. Brody for the very concise but adequate presentation of our situation and prospects.

4. Mr. Kaplan, Chairman of the Advertising Committee, presented the Sealy advertising program for the first six months of 1944 and showed items and displays with approximate costs of each item and also costs of the complete packages, explaining the vital necessity of using the program in its entirety. He reviewed the magazine program and the schedule of dates, also layouts for the Sealy advertisements. It was the consensus of opinion that our program as presented by Mr. Kaplan was the most attractive and complete program that Sealy had ever had. Mr. Kaplan took orders for the complete advertising package for delivery as soon as completed. Mr. Haas stated that 50% of cost of package could be charged back to Sealy up to 40% of royalty. Mr. Bergmann thanked Mr. Kaplan for his very adequate presentation, which he said showed understanding and a careful working out of every detail.

5. The meeting adjorned at 1:00 P.M. for lunch.

[fol. 1082E] 6. The meeting reconvened at 2:15 P.M., the same members being present.

7. Mr. Haas outlined the present situation of the cotton market, and the situation in the raw ma terial market in general.

8. Mr. Marquardt reported on the work of the ticking committee, especially on the work accomplished on their trip to New York. Samples were shown of the tickings selected for the various Sealy items. The Chairman thanked Mr. Marquardt and the members of his committee for their efficient work and suggested a vote of thanks which was given unanimously. The meeting adjourned at 4:30 P.M.

——, ——, President. E. H. Bergmann, Vice President. R. G. Culp, Secretary.

W. J. Craig, Asst. Secretary.

[fol. 1033E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 956

Minutes of the Meeting of the Board of Directors of Sealy, Incorporated, Held at the Drake Hotel, Chicago, Illinois, November 23, 1945.

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[fol. 1034E] 12. Mr. Haas stated that he was in favor of training a man that might eventually become the head of Sealy, Incorporated and that he had such a man in view and asked the Board for approval to hire him. (No vote was taken—only Mr. Stein objected.)

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[fols. 1035E-1036E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 957

Minutes of the Meeting of the Licensees of Sealy, Inc., Held at the Drake Hotel, Chicago, Illinois, November 25, 1945.

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3. Mr. Haas opened the meeting and spoke on the necessity for proper management and the need for additional top personnel.

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[fol. 1037E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 958

List of Stockholders Sealy, Incorporated

March 9, 1947.

		Number of Shares
Brown Reliable Bedding Co.	3818 (illegible) St., Detroit, Mich.	10
R. G. Culp	2106 Penn Ave., Pittsburgh, Pa.	5
Max Kligman	480 Morgan Ave., Brooklyn, N.Y.	10
Morris Lewis & Samuel Hertz	43 Aspen St., Passaic, N.J.	10
G. A. Maish Company	326 Perry St., Cincinnati, Ohio	35
J. L. & T. O. Metcalfe	Railroad Avenue, Bluefield, Va.	5
M. Nieremburg & Morris Stein	2363 Larimer St., Denver, Colo.	35
Osiason, Inc.	154 Broadway, Fall River, Mass.	2
Seniel Ostrow	5810 S. Normandiel, Los Angeles, Calif.	60
Pettit Bedding Company	2337 (illegible) York St., Portland, Oregon	36
Rogers Mfg. Company	Box 7506 John Allen Station, Houston, Tex.	10
Sealy Mattress Co.	933 N. Halsted St., Chicago, Ill.	21
Sealy Mattress Co.	801 Santa Fe, Kansas City, Mo.	10
Sealy Mattress Co.	3020 (illegible) Clarks St., Milwaukee, Wisc.	20
Sealy Mattress Co.	2106 Penn. Ave., Pittsburgh, Penn.	36
Schmitt & Henry Mfg. Co.	301 S.W. 8th St., Des Moines, Iowa	20
Sidney Sutherland	(illegible) Harvie St., Richmond, Va.	5
U.S. Bedding Co.	1047 Florida St., Memphis, Tenn.	344
Ernest M. Wuliger	3841 N. 37th St., Cleveland, Ohio	77
Lawrence J. Zimmerman	Box 350, East Point, Georgia	5
Kate Zimmerman	" " " " "	5
		790 Sh.
	Treasury Stock	710 "

[fol. 1038E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 962

Minutes of the Meeting of the Stockholders of Sealy, Incorporated, Held at the Stevens Hotel, Chicago, Illinois, November 21, 1947.

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[fol. 1039E] 9. Mr. Haas moved that the resolution be adopted and the By-Laws be amended. Mr. Kanter seconded the motion. Passed.

10. Mr. Rogers reported for the nominating committee for Directors as follows:

E. H. Bergmann, M. A. Kaplan, Ben Rosenfeld, E. M. Wuliger, J. J. Willens, Peter D. Brown, Louis G. Haas, R. G. Culp, H. B. Fouts, M. H. Yulman, Sidney Sutherland, and J. R. Haas.

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——, ——, President. E. H. Bergmann, Vice President. ——, ——, Secretary.

W. J. Craig, Assistant Secretary.

[fols. 1040E-1041E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 964

Minutes of Meeting of Licensees of Sealy, Incorporated Held at Furniture Mart, Friday, July 2, 1948.

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[fols. 1042E-1043E] The President stated that approximately ninety-eight (98) shares of stock of Sealy, Incorporated was available at $105.00 per share, it being pointed out that each licensee would be entitled to four shares. Mr Herbert Haas, counsel for the company, explained that the purchase of these shares of stock was subject to the condition that the licensee must re-sell the same to Sealy, Incorporated at his cost, in the event his license was terminated for any reason, provided that if a bona fide offer in excess of such cost were received by the licensee, Sealy. Incorporated must meet such bona fide offer. The following licensees immediately subscribed for their shares of stock:

Sealy Mattress Company of Memphis
Sealy Mattress Company of Southern California
Sealy Mattress Company of Atlanta
Sealy Mattress Company of Portland
Sealy Mattress Company of Pittsburgh
Sealy Mattress Company of DesMoines
Sealy Mattress Company of Chicago
Sealy Mattress Company of Richmond
Sealy Mattress Company of Schenectady
Sealy Mattress Company of Detroit

Mr. Haas pointed out that the certificates would be issued shortly, and that the subscribers and Sealy would consider the sales consumated.

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[fol. 1057E] The U. S. Bedding Company further agress to obtain a new contract from Sealy, Inc., for Slumber Products Corporation to permit it to manufacture and sell Sealy products in the State of Georgia, upon the consideration and agreement by Slumber Products Corporation that they would, upon the execution of such franchise right, begin the immediate sale and servicing of Sealy products within the State of Georgia, and would, during the year 1953, rent, erect or purchase a warehouse or procure warehousing facilities in the City of Atlanta, or its environment for the sale, servicing and distribution of Sealy products, and Slumber Products Corporation is to further agree that within three (3) years after obtaining such franchise rights, to rent, purchase or erect a factory for the manufacture, sale, servicing, and distribution of Sealy products in the City of Atlanta or its environments, with adequate facilities to service the status of Georgia and Florida, and the sale and manufacture of Sealy products; and that Slumber Products Corporation also agrees that they will maintain, during the life of their agreement with Sealy, Inc., for the State of Georgia, adequate sales personnel and supervision and necessary advertising to properly facilitate the sales of Sealy Products within that area.

Slumber Products Corporation agrees that the contract between the U. S. Bedding Company and Sealy, Inc., for the Memphis operation, which is to be assigned herein, will be amended so as to reflect that the Slumber Products Corporation cannot sell or assign such Sealy contract from and after March 1, 1953 to any person, firm or corporation without the written consent and approval of the Board of Directors of Sealy, Inc., except that such assignment may be made to stockholders of the Slumber Products Corporation provided such stockholders are relatives, of at least the second degree of the present stockholders of said corporation."

Authorization of Transfer of Sealy Contract to Slumber Products Co.

11. Mr. Morris Stein made a motion that the transfer of the franchise contract from U. S. Bedding Company to Slumber Products Corporation be approved, subject to the

agreements outlined above. This motion was seconded by Mr. Ostrow and passed.

[fol. 1058E]. Transfer of Sealy License Fort Worth Territory to Sealy Company of the Southwest

12. Mr. Brown made a motion that the franchise contract now held by the U. S. Bedding Company for the Texas and Oklahoma territory be transferred to the Sealy Company of the Southwest—this company to be owned and operated by Mr. Louis G. Haas. Mr. Culp seconded the motion and it was passed.

Discussion of Possible Florida Territory

13. Mr. Bergmann stated that he had been in negotiation for the Sealy franchise holder in Miami, Florida and that he was under the impression that the U. S. Bedding Company had surrendered that portion of Florida as indicated by the minutes of the board meeting of April 2, 1952. The discussion of this matter reverted to the matter of the territory being transferred from the U. S. Bedding Company to Slumber Products Corporation under the transfer of the franchise contract, now held by U. S. Bedding Company and the board expressed their feeling that the executive staff should endeavor to extract the counties of Palm Beach, Broward, and Dade in the final negotiation with Slumber Products Corporation.

Factual Sales Report of Des Moines, Reading, & Louisville Plants

14. Mr. Bergmann presented a factual sales report of the sales of the Des Moines, Reading, and Louisville plants and stated that it was his intention to present to the board, once a year, the sales progress of those plants under 90% of their sales par as established by Sealy from time to time.

Extension of Louisville Contract fo 8 Months

15. Mr. Bergmann stated that the franchise with the Logan Company of Louisville would expire on March 31, 1953, and that he would like to have the board action on his recommendation that the Louisville agreement be extended

[fol. 1044E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 970

Minutes of the Board of Directors of Sealy, Incorporated Held on November 11, 1950, Private Dining Room 13, Stevens Hotel, Chicago, Illinois.

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Discussion of Full Time Employment of President

5. There was a general discussion regarding the question of full time employment of Mr. E. H. Bergmann for Sealy, Incorporated. Various members expressed their reasons and convictions for full time employment. Mr. Wuliger, speaking for the Ohio Mattress Company, expressed an extreme reluctance on the part of the Cleveland plant to giving up the services of Mr. Bergmann to that organization. He also expressed the advantages to Sealy, Incorporated to having Mr. Bergmann in close affiliation with an operating plant. No conclusions on this subject were reached.

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[fol. 1045E] Committees

9. Mr. Bergmann appointed the following standing committees: *Advertising Committee,* M. A. Kaplan, Chairman, J. R. Lawrence, J. F. Zarish, E. J. Kanter, Ernest Wuliger and William Walzer, *Syndicate Selling Committee:* E. J. Kanter, Chairman, C. B. McGillivary, M. H. Yulman, Peter Brown. *Grievance Committee;* Herbert J. Haas, Chairman, H. B. Fouts, M. A. Kaplan and Ernest Wuliger. *Merchandising and New Idea Committee;* Louis Haas, Chairman, Joe Willens and William Walzer.

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[fol. 1046E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 972

Minutes of Sealy Incorporated Board of Directors Meeting Held in Space 920 American Furniture Mart, Chicago, Illinois November 9, 1951.

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Investment of Corporate Funds

6. Mr. Bergmann gave an outline of his plans for the investment of approximately $15,000.00 per year of the corporate funds in bonds and stocks for the purpose of establishing a negotiable asset against the $150,000.00 value carried in the statement on Sealy patents and trademarks. He stated that approximately $21,000.00 had already been invested in stock of Posture Products, Inc. and suggested that approximately $9,000.00 additional be invested in some dividend paying stocks or bonds. Mr. Kanter made a motion that the expenditure of the corporate funds for such purpose be authorized and that the selection of the stocks or bonds be left to the discretion of the president. This motion was seconded by Mr. Fouts and passed.

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[fol. 1047E] Renewal of Licensee Contracts

10. Mr. Bergmann called to the board's attention that the following license agreements would expire during the year 1952 and suggested that since the licensees would be asked to participate in a television program, that the Board give consideration to the renewal of their contracts. Those license agreements expiring are as follows: Eagle Mattress Company, Allston, Massachusetts expires April 30, 1952. Metcalfe Brothers, Inc., Bluefield, Virginia expires March 31, 1952. Slumber Mattress

[fol. 1048E] 10. Company, Pittsburgh, Pennsylvania expires April 30, 1952. Dixie Bedding Company, Richmond, Virginia expires January 1, 1952. Sanitary Bedding Com-

pany, St. Paul, Minnesota expires December 31, 1951. The Colorado Mattress Company, Denver, Colorado expires May 30, 1952. Super Rest Products Company, Rochester, New York expires September 30, 1952. American Bedding Company, Charlotte, North Carolina expires September 30, 1952.

The board discussed the renewal of any and all contracts to be renewed for a five year period and agreed on the policy that any renewal on a five year basis carry minimum payments of 70% of the sales par of the previous year for the first year of the renewal, 80% for the second year, 90% for the third year, 100% for the fourth and fifth year and for all years thereafter on a perpetual basis.

Mr. Wuliger made a motion that the above contracts be considered for a five year renewal agreement based on the payment of a minimum royalty of 70% of their sales quota for the first year, 80% for the second year, 90% for the third year, and 100% for the fourth and fifth years. The sales par of the plants to be established as has been the custom in the past. This motion was seconded by Mr. Brown and passed. The following action was taken:

Allston—renewed for a five year period on a 70-80-90-100 basis with the exception that the city of Brattleboro in the state of Vermont not be included in the new agreement.

Bluefield—renewed on a 70-80-90-100 basis for five years.

Pittsburgh—renewed on a 70-80-90-100 basis for five years.

St. Paul—renewed on a 70-80-90-100 basis for five years.

Denver—renewed on a 70-80-90-100 basis for five years.

Rochester—renewed on a 70-80-90-100 basis for five years.

Richmond—renewed on a 70-80-90-100 basis for five years.

Charlotte—to be renewed on a basis decided by the officers of Sealy, Inc. after a meeting with the officials of the American Bedding Company.

Proxy for Posture Products Stock

11. Mr. Bergmann made a suggestion that the authorization for the voting of the Posture Products stock owned by Sealy, Inc. be given to Mr. M. A. Kaplan, vice president, and that the secretary be instructed to execute a proxy to that effect. Mr. Brown made a motion that such authorization be granted. This was seconded by Mr. Wuliger and passed.

[fol. 1049E] Purchase of Common Stock

12. Mr. Bergmann reported that he had requests for the purchase of common stock of Sealy, Incorporated by the following persons and corporations:

Brown Reliable Bedding Co., Licensee	28 shares
Peter Brown, President of Brown Reliable Co.	50 shares
King Brown, Secretary of Brown Reliable Co.	50 shares
Sealy Mattress Co. of Chicago, Ill., Licensee	50 shares
Earl H. Bergmann, President of Sealy, Inc.	10 shares
Waterbury Mattress Co., Licensee	10 shares

Upon motion of Morris Stein, seconded by R. G. Culp the officers were authorized to issue said shares to the above named persons and corporations upon their execution of contracts with the company with respect to such shares and upon payment of the purchase price of said shares at $100.00 per share.

It was noted that some of said shares had been issued prior to this meeting and upon motion of Mr. Stein the act of the officers in issuing such stock was ratified and approved.

13. Meeting recessed at 9:30 P.M.

E. H. Bergmann, President. J. R. Lawrence, Vice President. ——, ——, Ass't. Secretary.

[fol. 1050E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 973

Minutes of Sealy, Incorporated Stockholders Meeting Held at American Furniture Mart Chicago, Illinois Nov. 10th, 1951.

Roll Call

1. The meeting was called to order at 2:00 P.M. by Earl H. Bergmann, president, and R. G. Culp acted as secretary with the following stockholders present:

Name	Number of Shares Sealy, Incorporated
Bergmann, E. H.	10 (p in p)
Brown H. King and/or Diana Brown, Det.	50 (p by p)
Brown, Peter D. and/or Dorothy Brown, Det.	50 (p in p)
Brown Reliable Bedding Co., Detroit. Mich.	50 (p by p)
Colorado Mattress Mfg. Co., Inc. Denver	9 (p by p)
Culp, R. G., Pittsburgh, Pa.	5 (p in p)
Eagle Mattress Co., Allston, Mass.	8 (p by p)
Empire State Bedding Co., Schenectady, N. Y.	22 (p by p)
Kanter, Edward J. and/or Tillie S. Kanter, Kansas City, Mo.	50 (p in p)
Kegan, Bernard M. S., St. Paul, Minn.	15 (p in p)
Kligman, Max, Brooklyn, N. Y.	10 (p in p)
Lewis, M., & Herts, Samuel, Passaic, N. J.	10 (p in p)
Metcalfe Bros., Inc.	5 (p by p)
Pettit Bedding Co., Portland, Oregon	40 (p by p)
Rogers Mfg. Co., Houston, Texas	10 (p by p)
Schmitt & Henry Mft. Co., Des Mointes	32 (p by p)
Sealy Mattress Co., Chicago, Ill.	103 (p by p)
Sanitary Bedding Co., St. Paul, Minn.	5 (p by p)
Sutherland, Sidney, Richmond, Va.	5 (p in p)
U. S. Bedding Co., Memphis, Tenn.	344 (p by p)
Waterbury Mattress Co., Waterbury, Conn.	20 (p by p)
Wuliger, Ernest M., Cleveland, Ohio	77 (p in p)

Election of Judges

2. The president appointed Herbert J. Haas and J. R. Lawrence as Election Judges, who, after taking the oath of office, examined the proxies and reported as to the number of shares present and authorized to vote, as follows:

(a) Sealy, Incorporated has issued and outstanding and entitled to vote at this meeting 1173 shares. Of said shares 232 shares are present at this meeting in person, and 782 shares are present at this meeting by proxy. In person and by proxy a majority were present constituting a quorum for the transaction of business.

Financial Statement of 6/30/51.

3. (a) The Financial Statement of June 30, 1951 was read and reviewed by Mr. Bergmann.

Upon motion of L. G. Haas, seconded by Peter Brown, the report was approved.

[fol. 1051E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 974

Minutes of Sealy, Incorporated New Board of Directors Meeting Held at American Furniture Mart, Chicago, Illinois, November 10, 1951.

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[fols. 1052E-1053E] Standing Committees

7. The president made the following nominations of standing committees:

(a) Advertising Committee—M. A. Kaplan, Chairman, E. J. Kanter, William Walzer, E. M. Wuliger, Entire Staff.

(b) Specifications Committee—M. H. Yulman, Chairman, M. A. Kaplan, L. G. Haas, Ben Rosenfeld, Morton Walzer, E. M. Wuliger.

(c) Promotional Seales Committee—E. M. Wuliger, Chairman, M. A. Kaplan, E. J. Kanter, William Walzer, Joe Young.

(d) New Ideas Committee—L. G. Haas, Chairman, Irving Fisher, H. F. Kaufman, William Walzer, J. J. Willens.

(e) Grievance Committee—H. J. Haas, Chairman, H. B. Fouts, M. A. Kaplan, E. M. Wuliger.

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[fols. 1054E-1055E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 976

Minutes of Sealy, Incorporated Board of Directors Meeting Held at Conrad Hilton Hotel, Chicago, Ill., November 21, 1952.

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[fol. 1056E] Proposed Sale of U. S. Bedding Co. of Memphis, Tennessee

10. Mr. Bergmann stated that there had been negotiations for the sale of the U. S. Bedding Company, Memphis, Tennesse and that solicitation had been made for the approval of the transfer of the franchise contract now held by the U. S. Bedding Company. Mr. Louis Haas stated that the following agreements were reached in negotiations between the Slumber Products Corporation and the U. S. Bedding Company:

"(a) That the franchise contract that it has with Sealy, Inc., may be assigned to the Slumber Products Company with the understanding that the contract to be assigned does not include any franchise rights in the States of Oklahoma and Texas and excludes all territories that may have been re-assigned to Sealy, Inc. prior to March 1, 1953.

(b) To obtain from Sealy, Inc., for and on behalf of Slumber Products Company, the right to continue to manufacture and service "Restonic Products" for a period of fifteen months from March 1, 1953, upon condition that the Slumber Products Company agrees to cease the manufacture, sale or servicing of Restonic products from and after such date, either directly or indirectly, and that none of the principals of Slumber Products Company will have any direct or indirect financial interest in any company or corporation manufacturing, selling or servicing "Restonic" products from and after fifteen months from March 1, 1953.

Slumber Products Corporation agrees to enter into an agreement with Sealy, Inc., that during the period of time from March 1, 1953, and fifteen months thereafter, to pay Sealy, Inc. a royalty of not less than the average monthly royalty paid by the U. S. Bedding Company from its Memphis operation, during the year 1952.

eighteen months. Mr. Ostrow made a motion that the agreement with the Logan Company be extended eighteen months and at the end of that period that if their sales and manufacturing performance are deemed adequate, then they be given a regular five year contract. This motion was seconded by Mr. Fouts and passed.

Approval of Lexington Contract

16. Mr. Bergmann gave an outline of the agreement between Sealy, Incorporated and the Peerless Mattress Mfg. Co. of Lexington, North Carolina. Mr. Kaplan made a motion that this agreement be approved. This was seconded by Mr. Haas and passed.

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[fols. 1059E-1061E] Canadian Operations Authorized

18. Mr. Bergmann gave an outline of his talks with possible Canadian licensees and asked the board's authorization for the necessary expenditure for expansion in Canada. Mr. Yulman made a motion that this authorization for the expansion of Sealy activities in Canada be made. This was seconded by Mr. Fouts and passed.

Approval of Issuing of Additional Shares of Sealy, Inc. Stock

19. Mr. Bergmann stated that he had requests for additional purchases of Sealy, Incorporated stock at $100.00 per share. The requests were as follows: 50 shares by Mrs. Bertha Hartman, 5 shares by J. R. Lawrence, 25 shares by E. H. Bergmann, 10 shares by Sidney Sutherland, 10 shares by J. Rudick, 20 shares by the Waterbury Mattress Company, 3 shares by the Empire State Bedding Company, 25 shares by M. H. Yulman, and 21 shares by the Slumber Mattress Company. Mr Stein made a motion that the purchase of the above shares be authorized. This motion was seconded by Mr. Kaplan and passed.

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[fol. 1062E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 978

Sealy, Incorporated Stockholders

Name	Plant	Shares
Eagle Mattress Co.	Alston	8
Joseph Rudick	Baltimore	5
Metcalfe Brothers, Inc.	Bluefield	6
Rogers Mfg. Co.	Brenham	12
Max Kligman	Brooklyn	12
Fisher Products	Chester	5
Sealy Mattress Co.	Chicago	103
Meyer & Morris Kaplan	Chicago	69
Ernest M. Wuliger	Cleveland	92
Colorado Mattress Mfg. Co.	Denver	93
Schmitt & Henry Mfg. Co.	Des Moines	38
Brown H. King and/or Diana	Detroit	104
Brown Pete D. and/or Dorothy	Detroit	104
Brown Reliable Bedding	Detroit	250
Sleepcraft	Ft. Worth	5
David Mfg. Co.	Kansas City	108
Mrs. Joe Hartman	Kansas City	119
Isadore Gale	Kansas City	21
Sealy Mattress Co.	Los Angeles	72
R. S. Logan	Louisville	12
Slumber Products	Memphis	50
Lewis M. & Herta Samuel	Paterson	10
R. G. Culp	Pittsburgh	65
H. F. Kaufman	Pittsburgh	60
Sealy Mattress Sales Co.	Pittsburgh	35
Slumber Mattress	Pittsburgh	25
Pettit Bedding Co.	Portland	40
Hodges Bedding Co.	Reading	12
Sidney Sutherland	Richmond	18
Sanitary Bedding Co.	St. Paul	20
M. H. Yulman	Schenectady	25
Empire State Bedding Co.	Schenectady	35
Waterbury Mattress Co.	Waterbury	60
E. H. Bergmann		101
J. R. Lawrence		12
Leonard Pressman, Trustee		33
Total Shares Outstanding		1839

Certified to be correct list as of 9/28/54.

J. R. Lawrence, V.P.

Proxy

Date ——

Know all men by these presents - that the undersigned does constitute and appoint ————his attorney, with power of substitution for him and in his name, place, and stead, to vote as his proxy for the election of Directors, and upon all matters that may be considered at the Annual Meeting of Stockholders of Sealy, Incorporated, to be held at the office of the Corporation, No. 666 North Lake Shore Drive, in the City of Chicago, State of Illinois, on the 12th day of November, 1954, at 10:00 o'clock A.M. or at any adjournment thereof, according to the number of votes he should be entitled to vote, as fully and with like effect as if then personally present, hereby revoking all former proxies. In Witness Whereof, I, or We have hereunto set — hand and seal this — day of ——, 1954.

——, ——, (Corporate name or individual

Attest:—— ——,

(Secretary or Witness

[fol. 1063E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 980

Sealy, Incorporated Stockholders

	Plant	Shares
E. H. Bergmann		165
Brown, H. King and/or Diana	Detroit	111
Brown, Peter D. and/or Dorothy	Detroit	111
Brown Reliable Bedding	Detroit	252
Colorado Mattress Mfg. Co.	Denver	93
R. G. Culp	Pittsburgh	50
David Mfg. Co.	Kansas City	108
Eagle Mattress Company	Allston	8
Empire State Bedding	Schenectady	63
Fisher Products	Chester	5
Mrs. Joe Hartman	Kansas City	122
H. F. Kaufman	Pittsburgh	60
M. Lewis and Samuel Herts	Paterson	13
R. S. Logan	Louisville	15
Eugene Kligman	Brooklyn	3
Max Kligman	Brooklyn	12
Fred G. Hodges Bedding Co.	Reading	15
Metcalfe Bros., Inc.	Bluefield	9
Pettit Bedding Co.	Portland	40
Rogers Manufacturing Co.	Brenham	12
Schmitt & Henry Mfg. Co.	Des Moines	41
Sealy Mattress Company	Chicago	103
Sealy Mattress Company	Los Angeles	72
Sealy Mattress Sales Co.	Pittsburgh	35
Sanitary Bedding Company	St. Paul	23
Sidney Sutherland	Richmond	21
Sleepcraft, Inc.	Fort Worth	5
Slumber Mattress Co.	Pittsburgh	28
Slumber Products Co.	Memphis	53
Waterbury Mattress Company	Waterbury	63
Ernest M. Wuliger	Cleveland	95
Mr. and/or Mrs. Isadore Gale	Kansas City	21
Leonard Pressman—Trustee	Chicago	33
Louis G. Haas & Mary D. Haas	Fort Worth	3
Maryland Bedding Company	Baltimore	10
Burton B. & Robert B. Kaplan as joint tenants	Chicago	72
Louis J. Gross	Rochester	5
Myron Brenner	Rochester	5
Peerless Mattress Company	Lexington	5
Total Shares Outstanding		1 900

Certified to be a correct list as of Sept. 23, 1955.

E. H. Bergmann, President.

[fol. 1064E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 981

November 11, 1955.

By-Laws of Sealy, Incorporated

Title

1. The title of this corporation is Sealy, Incorporated.

Location of Offices

2. The principal office of the corporation in Delaware shall be in Wilmington, and the resident agent in charge thereof shall be The Corporation Trust Company, 100 West Tenth Street, Wilmington 99, Delaware.

The corporation may also have on office or offices in the City of Chicago, State of Illinois, and at such other places as the Board of Directors may, from time to time, designate.

Corporate Seal

3. The corporate seal shall be circular in form and have inscribed thereon the name of the corporation, the year of its incorporation (1933) and the words "Incorporated Delaware".

Meetings of Stockholders

4. Meetings of the stockholders shall be held at the office of the corporation in the City of Chicago, State of Illinois, or at such other place or places as the Board of Directors may, from time to time designate.

The Annual Meeting of the stockholders for the election of the Board of Directors and the transaction of such other business as may properly come before the meeting, shall be held at such place in the City of Chicago, State of Illinois, as may be fixed by the President at the time of calling such Annual Meeting, as hereinafter set out. Such meeting shall be held during the month of November of each year at the

call of the President upon forty-five (45) days' notice, and such notice shall stipulate the time at which the meeting shall take place.

The Board of Directors may set a different time for the holding of the Annual Meeting, but no change of time or place for the Annual Meeting shall be made by the Direc- [fol. 1065E] tors within sixty (60) days next before the date on which such election is to be held; and, in case of any change in such time and place for such election of Directors, notice shall be given to each stockholder in person or by letter mailed to his last-known post office address at least twenty (20) days before the date of the annual meeting.

Each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by written proxy, signed by him, for each share of voting stock held by him, but no proxy shall be voted on after three years from its date, unless it provides for a longer period, but such right to vote shall be subject to the right of the Board of Directors to close the transfer books or to fix a record date for voting stockholders as hereinafter provided, and if the Directors shall not have exercised such right, no share of stock shall be voted on at any election for Directors which shall have been transferred on the books of the corporation within twenty (20) days next preceding such election.

Special Meetings of the stockholders may be called by the President, and shall be called on the request in writing or by a vote of the majority of the Board of Directors or on demand in writing of stockholders of record owning a majority in amount of the capital stock outstanding and entitled to vote.

Notice of all meetings shall be mailed to each stockholder of record at his or her last-known post office address for Annual Meetings twenty (20) days and for special meetings ten (10) days prior thereto.

The holders of a majority of the stock outstanding and entitled to vote shall constitute a quorum, but the holders of a smaller amount may adjourn from time to time without further notice until a quorum is secured.

The maximum holdings or ownership of stock of the corporation by any person, firm, or corporation, and by any licensee, its officers, directors and stockholders, (including

the wife, child or children or trustee for the wife, child, or children of any officer, director, or stockholder of the licensee) shall be limited to twenty-five (25) per cent of the voting shares of the corporation issued and outstanding.

Directors

5. The property and business of the corporation shall be managed and controlled by a Board of Directors consisting of not less than nine (9) nor more than fifteen (15) [fol. 1066E] members who shall, unless specified by these by-laws or contracts of this corporation, act by a majority vote of a quorum present for the transaction of business of the corporation. The Board of Directors is to be elected by the stockholders at the Annual Meeting by a majority vote, and to hold office until the next Annual Meeting and until their successors are elected and qualified.

The stockholders at the Annual Meeting shall elect not more than three (3) of the Directors as Alternate Directors. No person shall be elected a Director or an Alternate Director unless he shall be a stockholder of this corporation or a representative of a stockholder of this corporation which has in effect, with this corporation, a license contract granting to such stockholder the right to manufacture and sell Sealy products. If, at any time, any Director or Alternate Director shall cease to be a stockholder, or cease to represent a stockholder having in effect with this corporation a license contract, his office shall forthwith become vacant.

Only one representative of a stockholder shall be eligible to serve as an active Director. Alternate Directors may be present at all meetings of the Directors, but shall be entitled to vote only if an active Director who is a representative of a stockholder licensee is not present at the meeting.

If there be a vacancy on the Board of Directors by reason of death, resignation, or otherwise, such vacancy shall be filled for the unexpired term by the remaining Directors, though less than a quorum, by a majority vote.

The Board of Directors may, at any time, by amendment of the By-Laws, increase the number of its members and may elect additional members to fill the offices so created, who shall hold office until the next Annual Meeting of the stockholders and until their successors are elected and qualified.

Powers of Directors

6. The Board of Directors shall have, in addition to such powers as are hereinafter expressly conferred on it, all such powers as may be exercised by the corporation, subject to the provisions of the statute, the Certificate of Incorporation, and the By-Laws.

The Board of Directors shall have power:

To purchase or otherwise acquire property, rights, or privileges for the corporation, which the corporation has power to take, at such prices and on such terms as the Board of Directors may deem proper.

[fol. 1067E] To pay for such property, rights, or privileges in whole or in part with money, stock, bonds, debentures, or other securities of the corporation, or by the delivery of other property of the corporation.

To create, make, and issue mortgages, bonds, deeds of trust, trust agreements and negotiable or transferrable instruments and securities, secured by mortgages or otherwise, and to do every other act and thing necessary to effectuate the same.

To appoint agents, clerks, assistants, factors, servants, and trustees, and to dismiss them at its discretion, to fix their duties and emoluments and to change them from time to time and to require security as it may deem proper.

To confer on any officer of the corporation the power of selecting, discharging, or suspending such employees.

To determine by whom and in what manner the corporation's bills, notes, receipts, acceptances, endorsements, checks, releases, contracts, or other documents shall be signed.

Meetings of Directors

7. After each annual election of directors, the newly elected Directors may meet for the purpose of organization, the election of Officers, and the transaction of other business, and, if a majority of the Directors be present at such time and place, no prior notice of such meeting shall be required to be given to the Directors. The place and time of such first meeting may also be fixed by written consent of the Directors.

Regular meetings of the Directors shall be held at such times and places as may be fixed by resolution of the Board. No notice of regular meetings shall be required.

Special Meetings may be called by the President on ten (10) days' notice in writing or on five (5) days' notice by telegraph to each Director and shall be called by the President in like manner on the written request of two Directors.

Special meetings of the Board may be held within or without the State of Delaware at such place as is indicated in the notice or waiver of notice thereof.

A majority of the Directors shall constitute a quorum, but a smaller number may adjourn from time to time without further notice, until a quorum is secured.

[fol. 1068E] Executive and other Committees

8. There shall be an Executive Committee consisting of the President Ex-Officio and five (5) other members of the Board to be appointed by the President with the approval of a majority of the entire Board.

Should any member of the Executive Committee cease to be a member of the Board of Directors during his term as a member of the Executive Committee, he shall automatically cease to be a member of the Executive Committee, and the vacancy thereon shall be filled by the President appointing a Director in his place, such appointment to be approved by a majority of the entire Board of Directors.

The Executive Committee shall not have power to alter or amend the By-Laws, but shall exercise all other powers of the Board of Directors between meetings of said Board, except the power to fill vacancies in their own membership, which vacancies shall be filled by appointment by the President subject to confirmation by a majority of the entire Board of Directors.

The Executive Committee shall meet at stated times or on notice to all by any of their own number. It shall fix its own rules of procedure. A majority shall constitute a quorum, but the affirmative vote of a majority of the whole Committee shall be necessary in every case.

The Executive Committee shall keep regular minutes of its proceedings and report same to the Board of Directors.

The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate such other Committees to exercise the powers of the Board of Directors to the extent provided in the resolution or resolu-

tions creating such Committees, but no such resolution or resolutions shall empower or change the manner of selecting the Executive Committee, as provided in this By-Law.

Compensation of Directors and Members of Committees

9. Directors and members of standing committees shall receive such compensation for attendance at each regular or special meeting as the Board shall, from time to time, prescribe.

Officers of the Corporation

10. The Officers of the corporation shall be a President, one or more Vice-Presidents, a Secretary, a Treasurer, counsel, and such other Officers as may, from time to time, be chosen by Board of Directors. The President and Vice-Presidents shall be chosen from among the Directors.
[fol. 1069E] One person may hold the offices of Secretary and Treasurer, or Vice-President and Treasurer, or Vice-President and Secretary, but not the offices of Vice-President, Secretary, and Treasurer.

The Officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any Officer elected or appointed by the Board of Directors may be removed either with or without cause at any time by the affirmative vote of a majority of the whole Board of Directors. If the office of any Officer or Officers becomes vacant for any reason, the vacancy shall be filled by the affirmative vote of a majority of the whole Board of Directors.

Duties of the President

11. The President shall be the Chief Executive Officer of the corporation. It shall be his duty to preside at all meetings of the Stockholders and Directors; to have general and active management of the business of the corporation; to see that all orders and resolutions of the Board of Directors are carried into effect; to execute all contracts and agreements authorized by the Board; to keep the seal of the corporation, and, when authorized by the Board or the Executive Committee, to sign and to affix the seal of the corporation to any instrument requiring the same, which seal shall be attested by the signature of the Secretary or the Treasurer.

He shall have the general supervision and direction of the other Officers of the corporation, and shall see that their duties are properly performed.

He shall submit a report of the operations of the corporation for the year to the Directors at their meeting next preceding the annual meeting of the stockholders and to the stockholders at their annual meeting.

He shall be ex-officio a member of all standing Committees, and shall have the general duties and powers of supervision and management usually vested in the office of President of a corporation.

Vice-President

12. The Vice-President or Vice-Presidents, in the order of their seniority, shall be vested with all the powers and required to perform all the duties of the President in his absence or disability, and shall perform such other duties as may be prescribed by the Board of Directors.

[fol. 1070E] The office of Honorary Trustee is created for the purpose of recognizing service and devotion to the cause of the corporation over a period of years. The Board of Directors, by a three-fourths vote of the full Board, shall have the right to elect anyone to such office. Such Officer shall not be a member of the Board of Directors nor shall he have any duties to perform except to give such counsel and advice to the Board and the Officers as he may, from time to time, be called upon for. He shall not exercise the function of any of the Vice-Presidents or other Officers of the corporation. He shall have the right to attend all meetings of the Board, and, when authorized by a majority of the Board, at the Annual Meeting, such attendance to be at the expense of the corporation. The election of such office shall be for life, or until such time as the interests of such person shall, in the determination of the Board, have come in conflict with the interests of the corporation.

President Pro Tem

13. In the absence or disability of both the President and the Vice-Presidents, the Board may appoint a President Pro Tem.

Secretary

14. The Secretary shall attend all meetings of the corporation, the Board of Directors, the Executive Committee, and standing committees. He shall act as clerk thereof, and shall record all of the proceedings of such meetings in a book kept for that purpose. He shall give proper notice of meetings of stockholders and Directors, and shall perform such other duties as shall be assigned to him by the President or the Board of Directors.

Treasurer

15. The Treasurer shall have custody of the funds and securities of the corporation, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors.

He shall disburse the funds of the corporation as may be ordered by the Board, Executive Committee, or President, taking proper vouchers for such disbursements, and shall render to the President and Directors, whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation, and at the regular meeting of the Board next preceding the annual stockholders' meeting, a like report for the preceding year. [fol. 1071E] He shall keep an account of stock registered and transferred in such manner and subject to such regulations as the Board of Directors may prescribe.

He shall give the corporation a bond, if required by the Board of Directors, in such sum and in form and with security satisfactory to the Board of Directors for the faithful performance of the duties of his office and the restoration to the corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his possession, belonging to the corporation. He shall perform such other duties as the Board of Directors or Executive Committee may, from time to time, prescribe or require.

Counsel

16. The counsel shall be the legal adviser of the corporation, and shall receive such salary for his services as the Board of Directors may fix.

Duties of Officers May be Delegated

17. In case of the absence or disability of any Officer of the corporation or for any other reason deemed sufficient by a majority of the Board, the Board of Directors may delegate his powers or duties to any other Officer or to any Director for the time being.

Certificate of Stock

18. Certificates of stock shall be signed by the President or Vice-President and either the Treasurer, Assistant Treasurer, Secretary or Assistant Secretary. If a certificate of stock be lost or destroyed, another may be issued in its stead upon proof of such loss or destruction and the giving of a satisfactory bond of indemnity, in an amount sufficient to indemnify the corporation against any claim.

Transfer of Stock

19. All transfers of stock of the corporation shall be made upon its books by the holder of the shares in person or by his lawfully constituted representative, upon surrender of certificates of stock for cancellation.

Closing of Transfer Books

20. The Board of Directors shall have power to close the stock transfer books of the corporation for a period not exceeding fifty (50) days preceding the date of any meeting of stockholders or for payment of any dividend or for the [fol. 1072E] allotment of rights or when any change or conversion or exchange of capital stock shall go into effect. In lieu of so closing the books, the Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the said above mentioned dates as a record date for the determination of the stockholders entitled to notice of or to vote at any such meeting or entitled to dividends or other rights hereinbefore mentioned.

Stockholders of Record

21. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

Fiscal Year

22. The fiscal year of the corporation shall begin on the first day in July in each year.

Dividends

23. Dividends upon the capital stock may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash or in property or in shares of the capital stock. Before paying any dividend or making any distribution of profits, the Directors may set apart out of any of the funds of the corporation available for dividends, a reserve or reserves for any proper purpose, and may alter or abolish any such reserve or reserves.

Checks for Money

24. All checks, drafts, or orders for the payment of money shall be signed by the Treasurer or by such other Officer or Officers as the Board of Directors may, from time to time, designate. No check shall be signed in blank.

Books and Records

25. The books, accounts, and records of the corporation may be kept within or without the State of Delaware, at such place or places as may, from time to time, be designated by the By-Laws or by resolution of the Directors.

[fol. 1073E]

Notices

26. Notice required to be given under the provisions of these By-Laws to any Director, Officer, or Stockholder, shall not be construed to mean personal notice, but may be

given in writing by depositing the same in a post office or letter-box, in a post-paid sealed wrapper, addressed to such stockholder, Officer, or Director at such address as appears on the books of the corporation, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Waiver of Notice

27. Any Stockholder, Officer, or Director may waive, in writing, any notice required to be given under these By-Laws, whether before or after the time stated therein.

Amendments of By-Laws

28. Except as specifically provided in any By-Laws of this corporation, these By-Laws may be amended, altered, repealed, or added to at any regular meeting of the stockholders or Board of Directors, or at any special meeting called for that purpose, by affirmative vote of a majority of the stock issued and outstanding and entitled to vote, or by a majority of the whole authorized number of Directors, as the case may be.

[fol. 1074E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 985

Sealy, Incorporated Stockholders

Name	No. of Shares
Bergmann, E. H.	105
Brenner, Myron	5
Brown, H. King and/or Diana	111
Brown, Peter D. and/or Dorothy	111
Brown Reliable Bedding Co.	252
Colorado Mattress Manufacturing Co.	93
Culp, R. G.	50
David Manufacturing Co.	108
Eagle Mattress Company	8
Empire State Bedding Co.	63
Fisher Products	5
Gale, Mr. and/or Mrs. Isadore	21
Gross, Louis J.	5
Hartman, Mrs. Joe	122
Haas, Louis G. and Mary D.	3
Hertz, Samuel and Lewis, M.	13
Hodges, Fred G., Bedding Co.	15
Kaplan, Burton B. and Robert B. as joint tenants	72
Kaufman, H. F.	60
Kligman, Eugene	3
Kligman, Max	12
Logan, R. S.	15
Maryland Bedding Co.	10
Metcalfe Bros., Inc.	9
Peerless Mattress Company	5
Pettit Bedding Company	40
Pressman, Leonard—Trustee	33
Rogers Manufacturing Company	12
Sanitary Bedding Company	23
Schmitt & Henry Manufacturing Company	41
Sealy Mattress Company, Chicago	103
Sealy Mattress Company of Southern California	72
Sealy Mattress Sales, Pittsburgh	35
Sleepcraft, Inc.	5
Slumber Mattress Company	28
Slumber Products Company	53
Sutherland, Sidney	21
Waterbury Mattress Company	63
Wuliger, Ernest M.	95
	1,900

Certified to be a correct list as of Sept. 26, 1956.

E. H. Bergmann.

[fol. 1075E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-D

Sealy, Incorporated—Officers & Directors, 1956-1957

Officers:

President	E. H. Bergmann
Vice President	M. A. Kaplan
Secretary	P. D. Brown
Treasurer	H. F. Kaufman

Directors:

Active:

E. H. Bergmann	J. L. Metcalfe
P. D. Brown	R. S. Rosenberg
R. G. Culp	Ben Rosenfeld
I. L. Fisher	J. R. Rudick
L. G. Haas	M. I. Walzer
H. B. Fouts	E. M. Wuliger
M. A. Kaplan	M. H. Yulman

Alternate:

H. F. Kaufman	W. H. Walzer

Honorary:

Seniel Ostrow	Morris Stein

Executive Committee:

M. A. Kaplan—Chairman
P. D. Brown
L. G. Haas
E. M. Wuliger
M. H. Yulman

Posture Products, Inc.—Officers & Directors, 1956-1957

President	E. H. Bergmann
Vice President	M. I. Walzer
Secretary-Treasurer	P. D. Brown
Asst. Treasurer	H. J. Hager, Sr.

Directors:

	Term Expires
E. H. Bergmann	1957
P. D. Brown	1957
M. I. Walzer	1958
M. H. Yulman	1958
M. A. Kaplan	1959
H. F. Kaufman	1959
J. R. Rudick	1959

[fol. 1076E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-E

Sealy, Incorporated 1957 Committees

Executive

M. A. Kaplan, Chairman
P. D. Brown
L. G. Haas
E. M. Wuliger
M. H. Yulman

Advertising & Merchandising

E. M. Wuliger, Chairman
M. A. Kaplan
W. H. Walzer
B. Nathanson (Canadian Liaison)

Staff: C. V. Boyard
G. C. Skappell
R. C. Smart

Bedding

Product Development & Specifications

L. G. Haas, Chairman
E. C. Haas, Sr.
J. L. Metcalfe
J. J. Willens

Staff: D. T. Armstrong
H. R. Judson

Cost

Bedding & Upholstery

Bernard M. S. Kegan, Chairman
C. W. Langstaff
Allen Unger

Staff: D. T. Armstrong
G. L. Fraikin

Market Chairmen

Boston—W. H. Walzer
Chicago—M. A. Kaplan
High Point—J. L. Metcalfe
New York—M. H. Yulman
San Francisco—M. J. Marzluft

Planning

H. B. Fouts, Chairman
P. D. Brown
R. G. Culp
Ben Rosenfeld

Sales Managers

Staff: R. C. Stuart, Chairman
C. V. Bovard
G. C. Shappell
Victor Cleinman, Waterbury
A. L. Goodman, Schenectady
C. B. McGillivray, Chicago
Ed. Larkin, Memphis
Kolmon Sachse, Detroit
Roy Unger, Detroit

Upholstery

Advisory & Finalization

L. G. Haas, Chairman
M. A. Kaplan
M. I. Walzer
E. M. Wuliger

Staff: D. T. Armstrong
H. R. Judson
W. A. Marbaugh

Designer: L. C. Algoren

IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-F

Sealy Incorporated Employees 1951—To-Date

Name	Address		From	To	Position
E. H. Bergman	3180 Lake Shore Dr.	Chicago, Ill.	1- 1-51	2- 2-57	President
E. J. Guckert	218 Dixie Blvd.	Del Ray Beach. Fla.	1- 1-51	12-31-56	Engineer
James R. Lawrence	Steadley Co.	Cartage, Mo.	1- 1-51	5- 1-55	Ex. V.P.
Joseph F. Zariah	544 Cumnor Court	Deerfield, Ill.	1- 1-51	2-28-53	Sales
Henry M. Lipson	1519 Edgewood	Winnetka, Ill.	1- 1-52	12-31-53	Sales
Helen L. Totem Ciesla	2548 West Iowa	Chicago, Ill.	8-16-51	5-21-53	Office
June Szerlong	1017 W. Byron	"	2- 1-51	12-17-52	"
Dolores Armenali Brunella	5933 N.W. hyway	"	7- 7-52	6-30-53	"
Irvin L. Johnson	545 Beldon	"	7-23-52	2- 2-57	"
Bertha Weisgerber	7229 N. Paulina	"	10- 7-52	2-22-57	"
Helena Temple	5040 N. Kenmore	"	12-28-52	2-22-57	Switchboard
Helen M. McCauley	1000 Loyola	"	1- 1-51	9-15-52	Office
Wm. J. Craig	4935 W. Superior	"	1- 1-51	6-15-52	Asst. Secy.
Joseph A. Young	9419 Hamlin	"	8- 1-51	8-28-52	Sales
Rose E. Lewis	no record	49 Hr. ending		6-25-52	
Mary Hambrick	no record		4-17-52	4-24-52	
Dorothy Colby	6312 N. Rockwell	Chicago, Ill.	6-16-52	6-30-52	
Dorothy M. Jordan	5955 S. Calumet	" 13 da. 1951	3 da. 1952		
Helen J. Berkson	5550 Kenmore	"	2-16-52	7-19-52	Office
Kenneth A. Olesnek	5441 S. Kildare	"	2- 4-52	7- 3-52	"
Barbara Moore Arnold	102 E. Chestnut	"	1- 1-51	9- 8-51	"
Gene M. Wilder	5718 Winthrope	"	1- 1-51	1-15-51	"
Mrs. Lillian Craig	4935 Superior St.	" 3 days	1- 5-51	3-13-51	"
Mrs. Veda Brookens	635 Leamington	" 17 Hr.	1- 5-51	1-25-51	"
Corrine D. Paulson	1517 No. Alder	Tacoma, Washington	11- 7-53	5-21-53	"
Lawton H. Crosby	403 Center Ave.	Lake Bluff, Ill.	7- 1-53	12-31-55	Sales Prom.
Gerald C. Shappell	1048 Pleasant Drive	Glen View, Ill.	7- 1-53	2-22-57	Adv. Mgr.
Harry R. Judson	411 N. Main Street	Ada, Ohio	9- 7-53	2-22-57	Engineer

[fol. 1078E]

Name	Address		From	To	Position
Colleen D. Reynolds	3600 N. Fremont	Chicago, Ill.	4-12-53	12-31-54	Office
Ann Semonick	Unknown		11-16-53	11-30-53	"
Suzanne Trubitt	2009 W. Arthur Street	Chicago, Ill.	6-14-53	8-16-53	"
Phyllis Trubitt	215 E. Chestnut Street	Chicago, Ill.	8-10-53	11-15-53	"
Norma K. Herr	1617 E. 50th Place	Chicago, Ill.	8-13-53	8-15-53	"
Kaye McLatchie	1245 Judson Ave.	Evanston, Ill.	7-16-53	7-26-53	"
Alice Koster	6039 Dorchester	Chicago, Ill.	5-24-53	7-21-53	"
Evelyn F. Fuentes	900 Margate Terrace	"	11-28-53	11-15-55	"
Joan Shutta Gilbertson	909 Washington	Evanston, Ill.	8-28-53	7-31-55	"
Rosalie Grace Baumgartner	2617 W. 61st Street	Chicago, Ill.	5- 1-53	1-22-55	"
Joseph N. Kallick	1031 Hyde Park Blvd.	Chicago, Ill.	6-12-55	5-15-56	Sales & Adv. Prom.
Wm. A. Marbaugh	806 N. Main Street	Wheaton, Ill.	3- 7-55	2-22-57	Uph. Dirc.
Hugh J. Gallagher	7338 N. Winchester	Chicago, Ill.	6-20-55	2-22-57	Off. Mfgr.
R. M. Dominici	8550 S. Knox	"	10-25-55	2-22-57	Uph. Corr.
Lois M. Piazzi	1247 N. Dearborn	"	2-14-55	2-22-57	Office
Carol C. Janowaik	7360 Lake Street	River Forest, Ill.	3-21-55	4- 6-56	"
Jayne Kurth	1628 Sherwin	Chicago, Ill.	3- 7-55	2-22-57	"
Marjorie Jean Burdekin	4544 N. Hazel	"	5-31-55	2- 8-56	"
Lois Kruglick	1159 Lunt	"	7-18-55	1- 4-56	"
Marion T. Yiend	5606 N. Fulton	"	7-11-55	2-22-57	"
Phyllis J. Hobbs	2920 N. Pine Grove	"	11-21-55	1- 6-56	"
June Ellingsen	1100 N. Dearborn	Chicago, Ill.	12-26-55	2-22-57	"
Margaret P. Knoll	2605 Oak Street	Bellwood, Ill.	9- 9-55	9-30-55	"
Elenor Faulkenthal	4834 W. Henderson	Chicago, Ill.	4- 1-55	8-12-55	"
Joan Goetzinger	1702 N. Vine Street	Chicago, Ill.	8-17-55	8- 3-55	"
Mary Ann Sullivan	7158 S. Cornell	Chicago, Ill.	4- 4-55	5-27-55	"
Mary Jane Lynch	5630 So. Paulina	Chicago, Ill.	3- 1-55	5-15-55	"
Delores Haugan	6404 N. Mozart	Chicago, Ill.	1-16-55	1-16-55	"
David T. Armstrong	2535 Fontanna Dr.	Glenview, Ill.	10- 1-55	2-22-57	Engineer
Carl V. Bovard	2234 Sherman	Evanston, Ill.	10- 1-56	2-22-57	Sales
Glenn Fraiken	6133 Kenmore	Chicago, Ill.	9-17-56	2-22-57	Systems
Robert C. Stuart	9503 Shermer Rd.	Morton Grove, Ill.	9-24-56	2-22-57	Sales Mgr.

Name	Address		From	T	Position
Leontine B. Anstrate	822 N. Campbell	Chicago, Ill.	1-10-56	2-22-57	Office
June Clark Chapek	6124 W. Cermak	Cicero, Ill.	4-16-56	2-22-57	"
Maria E. Curylo	3355 W. Belle Plaine	Chicago, Ill.	10-32-56	2-22-57	"
Simone Rogers	939 W. Winona	"	11-16-56	2-22-57	"
Lacerne Stark	2700 W. Chicago Ave.	"	2-11-57	2-22-57	"
Margaret M. Sweeney	928 W. Leamington	"	8-13-56	2-22-57	"
Shirley J. McLeod	920 W. Lakeside Pla.	"	4-23-56	1- 5-57	"
Raymond W. Zielinski	7958 N. Neva	Niles, Ill.	1- 8-56	12-20-56	Adv. Asst.
Karen Taylor	2749 N. Leavitt	Chicago, Ill.	2- 7-56	8-15-56	Office
Ethel Lackey	531 Deming Place	"	1-10-56	5- 4-56	"
Margaret Shanahan	1756 W. Sunnyside	"	3-15-56	4- 3-56	"
Adrianna Leynaar	1946 W. Argyle	"	4-10-56	4-11-56	"

[fol. 1079E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-G

October 26, 1956.

Sealy Plants

I. A. Wiener J. L. Wiener	Sealy Mattress Co. Eagle Mattress Co.	38-42 Everett Street Allston 34, Mass. (Algonquin 4-7324)
Joseph R. Rudick	Sealy Mattress Co. Maryland Bedding Co.	2307 Hollins Street Baltimore 23, Md. (Gilmore 5-7010)
J. L. Metcalfe	Sealy Mattress Co. Metcalfe Bros. Co.	P. O. Box 432, Gurney at Furnace St. Bluefield, Va. (Fairfax 61193-4)
Eugene Kligman	Sealy Mattress Co. Long Island Mattress Co.	460 Morgan Avenue Brooklyn 22, N. Y. (Evergreen 8-7760)
Factory	Sealy Mattress Co. Fisher Prod. Co.	316 Price Street Chester, Pa. (Chester 5-1865)
I. L. Fisher Sales Dept.		2119 Market St., 2nd Floor Philadelphia, Pa. (Locust 8-1090)
M. A. Kaplan	Sealy Mattress Co. R. H. Taylor Bedding Co.	903 N. Halsted Street Chicago 22, Ill. (Michigan 2-2050)
E. M. Wuliger	Sealy Mattress Co. Ohio Mattress Co.	2841 East 37th Street Cleveland 15, Ohio (Vulcan 3-0444)
Morris Stein	Sealy Mattress Co. Colorado Matt. Mfg. Co.	2363 Larimer Street Denver 2, Colo. (Tabor 5-4267)
H. B. Fouts	Sealy Mattress Co. Schmitt & Henry Mfg. Co.	301-325 S. W. 8th Street Des Moines 8, Iowa (Cherry 3-5165)
P. D. Brown	Sealy Mattress Co. Brown Reliable Bedding	5914 Federal Street Detroit 9, Mich. (Tashmoo 6-4700)
L. G. Haas	Sealy Mattress Co. Sleepcraft, Inc.	3601 Conway, P. O. Box 1283 Fort Worth, Tex. (Terminal 4-2841)
W. Brooks Brummitt	Sealy Mattress Co.	5247 Buffalo Speedway Houston 5, Tex. (Mohawk 7-6501)
Isadore Gale C. W. Langstaff	Sealy Mattress Co. David Mfg. Co.	501 Santa Fe Road Kansas City, Mo. (Victor 2-3088)
J. V. Moffitt, Jr.	Sealy of the Carolinas Peerless Mattress Co.	P. O. Box 598 Lexington, N. C. (3572)
J. J. Willens	Sealy Mattress Co. of Southern California	5810 S. Normandie Ave. Los Angeles 44, Cal. (Pleasant 3-3731)

[fol. 1080E]

William A. Edie	Sealy Mattress Co. Logan Co.	200 Cabel St. Louisville 6, Ky. (Wabash 1361)
Edgar C. Haas, Jr.	Sealy Mattress Co. Slumber Products Co.	P. O. Box 2847 354 S. Parkway West Memphis 2, Tennessee (Whitehall 8-4471)

Sealy Plants—Continued

M. J. Marsluft	Sealy Mattress Co. Of Northern Calif.	6699 San Pablo Ave. Oakland 8, Calif. (Olympic 26700)
	Sealy Mattress Co.	1809 S. Division–P. O. Box 5637 Orlando, Fla. (5–9435)
Max Lewis	Sealy Mattress Co. Made-Wel Bedding Co.	196 W. Railway Avenue Paterson, N. J. (Armory 4–7792)
R. G. Culp H. F. Kaufman	Sealy Mattress Co. Slumber Mattress Co.	1900 Lowe St.—West End Pittsburgh 20, Pa. (Walnut 2–1000)
Ben Rosenfeld	Sealy Mattress Co. Petit Bedding Co.	2337 N. W. York St. Portland 10, Ore. (Capitol 31106)
T. C. Engelhardt	Sealy Mattress Co. F. G. Hodges Bedding Co.	107 Chestnut St. Reading, Pa. (6–4844)
Martin Rudick	Sealy Mattress Co.	Williamsburg Ave. & Goddin St. P. O. Box 2236 (7–0348) Richmond, Va.
Louis J. Gross Myron Brenner	Sealy Mattress Co. Super-Rest Prod. Corp.	481–485 St. Paul St. Rochester 5, N. Y. (Hamilton 6–5365, 5364, 5363, 5362)
Ross S. Rosenberg Bernard M. S. Kegan	Sealy Mattress Co. Sanitary Bedding Co.	681 LaSalle St. St. Paul 14, Minn. (Midway 58143)
M. H. Yulman	Sealy Mattress Co. Empire State Bedding Co.	722 Broadway Schenectady 5, N. Y. (Dickens 6–2385)
William H. Walser Morton I. Walser	Sealy Mattress Co. Waterbury Mattress Co.	59 West Clay Street Waterbury 20, Conn. (Plaza 50141)
Bory Margolus	Canadian Bedding Co. Ltd.	11313–83rd St. Edmonton, Alberta, Canada (73511)
James Ware	Dominion Bedding Co.	2274 Moreau St.. Montreal 4, Quebec, Canada La Fontaine 4–1157
B Nathanson	Way Sagless, Ltd.	81 Riverside Drive Toronto 3, Ontario, Canada (Rogers 7–5481)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 238

UNITED STATES, APPELLANT,

vs.

SEALY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Volume IV—Exhibits

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No. 1012—Manufacturer's Contract, dated September 1, 1936 at Pittsburgh, Pa. by Sealy, Incorporated and The Ohio Mattress Co. of Cleveland, Ohio	1110E	997
No. 1013—Contract Agreement between Sealy and the Ohio Mattress Co., dated December 1, 1937 at Pittsburgh, Pa.	1126E	1011
No. 1014—Contract made between Sealy, Incorporated and Made-Wel Bedding Co. Proprietors—Morris Lewis & Samuel Hertz of 43 Aspen St., Passaic, N. J., at Chicago, Ill., May 1, 1941	1129E	1013
No. 1015—Contract made between Sealy, Incorporated and the Fred G. Hodges Bedding Co. of Reading, Pa. at Pittsburgh, Pa. on August 1, 1938	1145E	1027
No. 1016—Contract made between Sealy, Incorporated and U.S. Bedding Co. of Shelby County, Memphis, Tenn., November 1, 1936, at Pittsburgh, Pa.	1164E	1046
No. 1017—Contract made between Sealy, Incorporated and The Colorado Mattress Mfg. Co., of Denver, Colo., at Pittsburgh, Pa. on September 12, 1936	1201E	1092
No. 1018—Contract made between Sealy, Inc. and Sealy Mattress Co. of Northern California, place of business, Oakland, California, at Pittsburgh, Pa. on December 15, 1937	1222E	1113
No. 1020—Telegram from J. R. Lawrence to I. A. Wiener, dated December 2, 1948	1256E	1153
—Letter from I. A. Wiener to J. R. Lawrence, dated November 29, 1948	1257E	1153
—Letter from J. R. Lawrence to I. A. Wiener, dated November 24, 1948	1258E	1154
—Telegram from L. Ballard to J. R. Lawrence, dated December 8, 1948	1259E	1155
—Telegram from Sealy Mattress, Allston, Mass. to J. R. Lawrence, dated December 8, 1948	1260E	1155
—Letter from J. R. Lawrence to I. A. Wiener, dated December 15, 1948	1261E	1156
—An Agreement made between Eagle Mattress Co., and Sealy, Inc., on May 1, 1946	1262E	1157
No. 1031—Amendment to the Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, dated October 1947	1270E	1171

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued		
Government's Exhibits—Continued		
No. 1051—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Saralee (Mrs. Bernard) Kegan, on September 27, 1948	1273E	1174
No. 1061—Contract between Sealy, Incorporated and U.S. Bedding Co., of Memphis, Tenn., a corporation of Georgia, on July 1, 1950	1284E	1192
No. 1064—Contract between Sealy, Incorporated and David Mfg. Co., of the State of Missouri, with office at Kansas City, Mo., on October 1, 1952	1295E	1211
No. 1065—Contract between Sealy, Incorporated and Peerless Mattress Co., Inc., a corporation of North Carolina, with offices in Lexington, N.C., on November 1, 1952	1314E	1232
No. 1074—Contract between Sealy, Incorporated and Sanitary Bedding Co., a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan and Rebecca R. Lichter, on May 15, 1952	1334E	1254
No. 1085—Contract between Sealy, Incorporated and Schmitt & Henry Mfg. Co., of Des Moines, Iowa, whose tradename is Sealy Mattress Co., on September 28, 1948	1353E	1275
No. 1086—Contract between Sealy, Incorporated and Brown Reliable Bedding Co., a corporation of Michigan, on September 1, 1954	1365E	1296
No. 1107—Interrogatories 7, 8 and 9 and answers thereto	1383E	1315
No. 1113—Interrogatories 58 and 62 and answers thereto	1391E	1322
No. 1168—Telegram sent to Marty Rudick from Gloria S. Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 2, 1956	1402E	1332
No. 1169—Letter from Marty Rudick to Mr. Norman Bennett, U. S. Merchandise Mart, Washington, D.C., dated July 27, 1956	1403E	1333
No. 1170—Letter from Norman Bennett to Marty Rudick, Sealy Mattress Co., Baltimore, Md., dated April 21, 1956	1404E	1334
No. 1171—Letter from Marty Rudick to Norman Bennett, dated August 29, 1956	1405E	1335
No. 1172—Letter from Norman Bennett, President to Marty Rudick, dated September 10, 1956	1406E	1336

[fol. 1081E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-H

Sealy, Incorporated Stockholders, By Plants

Allston:

Eagle Mattress Company

Baltimore:

Maryland Bedding Company

Bluefield:

Metcalfe Bros., Inc.

Brenham:

Rogers Manufacturing Company

Brooklyn:

Max Kligman
Eugene Kligman

Chester:

Fisher Products Company

Chicago:

Sealy Mattress Company
Leonard Pressman, Trustee
Burton B. & Robert B. Kaplan

Cleveland:

Ernest M. Wuliger

Denver:

Colorado Mattress Manufacturing Company

Des Moines:

Schmitt & Henry Manufacturing Company

Detroit:

Brown Reliable Bedding Company
Peter D. Brown and/or Dorothy Brown
H. King Brown and/or Diana Brown

Fort Worth:

Sleepcraft, Inc.
Louis G. and Mary Haas

[fol. 1082E] Kansas City:

David Manufacturing Company
Mrs. Joe Hartman
Mr. and/or Mrs. Isadore Gale

Lexington:

Peerless Mattress Company

Los Angeles:

Sealy Mattress Co. of Southern Calif.

Louisville:

R. S. Logan

Memphis:

Slumber Products Corporation

Paterson:

Morris Lewis and Samuel Hertz

Pittsburgh:

Sealy Mattress Sales Company
Slumber Mattress Company
Robert G. Culp
H. F. Kaufman

Portland:

Pettit Bedding Company

Reading:

Fred G. Hodges Bedding Company

Richmond:

Sidney Sutherland

Rochester:

Myron Brenner
Louis Gross

St. Paul:

Sanitary Bedding Company

Schenectady:

Empire State Bedding Company

[fol. 1083E] Waterbury:

Waterbury Mattress Company

Sealy, Inc.:

E. H. Bergmann

[fols. 1084E-1087E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 996

Sealy, Incorporated Report on Examination Year Ended June 30, 1956

• • • • • • •

Sealy, Incorporated (a Delaware corporation)

Balance Sheet—June 30, 1956

Assets

Current:		
Cash		$ 80,912.44
Accounts receivable:		
Licensees	$460,050.66	
Others ($17,808.83 from Posture Products, Incorporated)	60,952.67	521,003.33
Total current assets		$ 601,915.77
Investments in and advances to other companies at cost:		
American Telephone and Telegraph Corp. common stock (market value $40,500)	$ 34,574.95	
Posture Products, Incorporated capital stock (advances $105,000)	171,585.00	
Sealy Sleep Products, Ltd. capital stock	2,742.20	208,902.15
Fixed:		
Office furniture and equipment, less accumulated allowance for depreciation of $15,061.37	$ 31,973.80	
Leasehold improvements, less accumulated allowance for amortization of $59,686.53	108,028.01	
	$140,001.81	
Floor samples	9,499.05	149,500.86
Patents, trade-marks and goodwill		150,000.00
Other:		
Prepaid rent ($12,243.51) and other		14,435.51
Total		$1,124,754.29

Liabilities

Current:		
Notes payable:		
Bank	$175,000.00	
Licensees	75,000.00	$ 250,000.00
Accounts payable (trade $186,944.69)		199,794.69
Accruals:		
Federal income taxes	$ 3,915.85	
Miscellaneous	1,547.93	5,463.78
Total current liabilities		$ 455,258.47

Capital

Capital stock:		
Common, $100 par—shares authorized 5,000; issued 2,500; in treasury 600; outstanding 1,900	$190,000.00	
Surplus:		
Capital	41,075.00	
Earned	438,420.82	669,495.82
Total		$1,124,754.29

[for. 1089E]

Sealy, Incorporated Statement of Income, Year Ended June 30, 1956

Income:		
Royalties (less $465,072.32 advertising refunds made to licensees)		$701,979.68
Commissions and other income—net		220,255.38
Market expenses billed		19,586.56
Engineering services billed		15,253.79
Dividends		3,015.00
Interest		2,759.31
Other		10,386.77
Total income		$973,236.49
Expenses:		
Advertising—net	$301,788.37	
Salaries	191,982.95	
General	180,374.17	
Selling and advertising	90,167.50	
Market	70,228.94	
Upholstering	18,322.79	
Engineering	10,366.31	
Total expenses		863,231.03
Income before federal income taxes		$110,005.46
Federal income taxes		2,000.00
Net income		$108,005.46

[fol. 1090E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 998

Sealy, Incorporated Report on Examination Year Ended June 30, 1955

[fol. 1091E]

Sealy, Incorporated, Statement of Surplus, Year Ended June 30, 1955

Capital Surplus	
Balance, July 1, 1954 and June 30, 1955, representing the following:	
Excess of the par value ($100) over the purchase price ($30 per share) on the original acquisition of 579 shares of treasury stock in 1936	$ 40,530.00
Add:	
Excess of selling price ($105 per share) over par value of 119 shares of treasury stock sold to licensees	595.00
	$ 41,125.00
Deduct:	
Excess of purchase price ($105 per share) over par value of 10 shares of stock acquired for treasury	50.00
Balance, June 30, 1955	$ 41,075.00
Earned Surplus	
Balance, July 1, 1954	$265,368.90
Add:	
Net income for the year	87,673.96
	$353,042.86
Deduct:	
Cash dividends—$6 per share	11,227.50
Balance, June 30, 1955	$341,815.36

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[fol. 1092E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 999

Sealy, Incorporated Report on Examination Year Ended June 30, 1954

Management Company

[fol. 1093E].

Sealy, Incorporated Statement of Surplus, Year Ended June 30, 1954

Capital Surplus	
Balance, July 1, 1953 and June 30, 1954, representing the following:	
Excess of the par value ($100) over the purchase price ($30 per share) on the original acquisition of 579 shares of treasury stock in 1936	$ 40,530.00
Add:	
Excess of selling price ($105 per share) over par value of 119 shares of treasury stock sold to licensees	595.00
	$ 41,125.00
Deduct:	
Excess of purchase price ($105 per share) over par value of 10 shares of stock acquired for treasury	50.00
Balance, June 30, 1954	$ 41,075.00
Earned Surplus	
Balance, July 1, 1953	$135,906.64
Add:	
Net income for the year	137,698.76
	$273,605.40
Deduct:	
Cash dividends—$6 per share	8,236.50
Balance, June 30, 1954	$265,368.90

[fol. 1094E] IN UNITED STATES DISTRICT COURT

Sealy, Incorporated Report on Examination Year Ended June 30, 1953

[fols. 1095E–1096E]

Sealy, Incorporated Statement of Surplus, Year Ended June 30, 1953

Capital Surplus

Balance, July 1, 1952 and June 30, 1953, representing the following:		
Excess of the par value ($100) over the purchase price ($30 per share) on the original acquisition of 579 shares of treasury stock in 1936		$ 40,530.00
Add:		
Excess of selling price ($105 per share) over par value of 119 shares of treasury stock sold to licensees		595.00
		$ 41,125.00
Deduct:		
Excess of purchase price ($105 per share) over par value of 10 shares of stock acquired for treasury		50.00
Balance		$ 41,075.00

Earned Surplus

Balance, July 1, 1952		$161,074.69
Net loss for the year	$16,781.55	
Cash dividends—$6 per share	8,386.50	25,168.05
Balance, June 30, 1953		$135,906.64

Liabilities

Current

Notes Payable			
Sears Community State Bank	$106,000.00		
Others	30,446.00	$136,446.00	
Accounts Payable		45,551.90	
Accrued:			
Misc. Expenses	$ 1,138.53		
Federal Income Taxes	4,224.31	5,362.84	
Total Current Liabilities			$187,460.74

Nominal

Capital Stock			
Common $100 par-shares authorized 2500: issued 2431; in treasury 959; outstanding 1472		$147,200.00	
Surplus			
Capital from stock purchased	$ 41,075.00		
Earned from operations	265,368.90	306,443.90	453,643.90
			$641,104.64

[fol. 1103E] Sealy Incorporated

Statement of Income and Expenses for 12 month period ended June 30, 1954 after audit

Income:		
Royalties—Licensees	$779,851.16	Average of 65,000.00
Posture Products, Inc.	24,010.23	$ 803,861.39
Liquidation of Adv. Inventories and Miscellaneous Income		150,763.71
Legal Damages		1,500.00
T.V. Payments—Contract		226,876.07
Engineering services billed—E. J. Guckert	$ 1,300.00	
H. R. Judson	9,709.79	11,009.79
Miscellaneous Earnings	$113,546.83	
Dividends	2,812.50	
Interest Earned	1,505.00	117,864.33
		$1,311,875.29
Expenses:		
Advertising (including magazine advertising of $81,326.05)	$337,958.98	
Advertising Refunds	320,744.38	
T.V. Contract	209,883.86	
Salaries	123,714.66	
Travel	13,242.56	
Rent & Market Expense: Chicago, New York, High Point & San Francisco	30,347.56	
Professional Services	11,502.58	
Directors & Committee Expense	17,109.27	
Chicago Office Expenses	10,017.69	
Sales Commissions and Expenses	16,536.19	
Sales Engineering not billed	539.82	
Interest Paid	1,944.94	
Social Security ($1,026.23) and other taxes	6,210.34	
Cleveland Office Expenses	2,666.24	
Designing & Experimental	8,085.52	
Insurance	1,208.12	
Miscellaneous	6,580.43	
Pension Trust	16,800.00	
Regional Meeting Expense	8,024.62	
Depreciation—Furniture & Fixtures	2,246.98	
Amortization—Leasehold Improvements	15,225.59	
Florida Franchise Expense	359.00	
Vigalante Service	1,833.96	
Patent Litigation—Serta	4,025.72	
Patent Litigation—Simmons	6,367.52	1,173,176.53
Income after Federal Taxes for 12 month period ending June 30, 1954—After Audit		$ 138,698.76

[fol. 1097E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1005

3/12/54

Agenda

Board of Directors Meeting Miami, Florida April 5-6-7, 1954

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[fol. 1098E] 1/27/54

1954 Committees, Sealy, Incorporated

Executive

Standing Members

Louis G. Haas, V.P.
M. A. Kaplan, V.P.

Elected Members

P. D. Brown—3 years
W. H. Walzer—2 years
E. M. Wuliger—1 year

Advertising & Merchandising

W. H. Walzer—Chairman
M. A. Kaplan—(Chr. '48-'53)
Edgar J. Haas, Jr.
Joe Rudick
E. M. Wuliger
Sealy Staff

Grievance

H. B. Fouts—Chairman
R. G. Culp
Wm. Rosenfeld
Morris Stein
M. H. Yulman

Licensee Guidance & Advisory

P. D. Brown
M. H. Yulman
J. R. Lawrence—(staff)

Markets

Chicago

M. A. Kaplan—Chairman
Edgar Haas, Jr.
L. G. Haas
C. W. Langstaff
Harry Ryden
E. M. Wuliger

Distant Markets

Boston—W. H. Walzer
High Point—J. V. Moffitt, Jr.
New York—M. H. Yulman
San Francisco—M. Marzluft

New Selling Ideas

J. J. Willens—Chairman
L. G. Haas
Joe Rudick
Jerome Wiener

Planning & Expansion

H. B. Fouts—Chairman
L. G. Haas
Ben Rosenfeld
E. M. Wuliger
M. H. Yulman

Production & Cost

M. I. Walzer—Chairman
L. G. Haas
Edward Siegel
A. Seissel Wayne
Sealy Engineers

Promotional Sales

M. A. Kaplan—Chairman
E. M. Wuliger—(Chr. '52 & '53)
E. J. Kligman
Joe Rudick
W. H. Walzer
Lawton Crosby—Staff
G. C. Shappell—Staff

Sales Managers

Roy Unger—Chairman
M. L. Haas—South
A. L. Goodman—East
C. B. McGillivray—Central
Harry Ryden—Central
M. Marzluft—West

Specifications

M. I. Walzer—Chairman
M. H. Yulman—(Chr. '52 & '53)
P. D. Brown
Edgar Haas, Jr.
H. F. Kaufman
J. J. Willens
Sealy Engineers

Upholstery—Dual Sleep

A. Seissel Wayne—Chairman
L. G. Haas—(Chr. '42 & '53)
King Brown
I. L. Fisher
Edward Siegel

[fol. 1099E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1011

Annual Stockholders Meeting Sealy, Incorporated, Nov. 12, 1954

[fol. 1100E] Minutes of Sealy, Incorporated Stockholders Meeting Held November 13, 1953, Conrad Hilton Hotel, Chicago, Illinois.

1. The meeting was called to order at 1:30 P. M. by the president.

Election of Judges

2. The president appointed Joseph F. Haas and J. R. Lawrence to act as election judges who, after taking the oath of office, examined the proxy and reported as to the number of shares present and authorized to vote as follows: Number of shares outstanding and entitled to vote—1273; present by proxy or in person/—1136; in person and by proxy—majority present, constituting a quorum for the transaction of business.

Minutes of 11/20/52

3. The minutes of the stockholders meeting of November 20, 1952 were submitted. Upon motion by R. G. Culp and second by Joseph Rudick the minutes were approved as submitted.

Financial Statement of 6/30/53

4. The audited financial statement of June 30, 1953 was submitted. Mr. Bergmann explained the reconciliation of the taxable income as to a statement which is on the accrual basis. Mr. Sidney Sutherland made a motion that the financial statement be accepted as submitted. This was seconded by Mr. M. Lewis and passed.

Annual Report of President

5. The president made his annual report to the stockholders and commented on the following items: Financial condition, income, net gains, dividends, sales, expansion of personnel, new national headquarters, Sealy Sleep Products, Ltd., legal matters, and prospects for the future of the organization.

Budget for Year Ending 6/30/54

6. Mr. Bergmann reviewed the estimated budget for the year ending June 30, 1954 which has been approved by the Board of Directors.

7. Mr. Bergmann asked if there were any stockholders present that wished to be heard. There were none.

Election of Directors

8. The president asked if the nominating committee, of which Mr. R. G. Culp is chairman, was ready for the nominations for the directors for the coming year. Mr. Culp stated that his committee, consisting of Mr. Brown, Mr. Fouts, Mr. Kligman and Mr. Willens offered the following names as Directors: E. H. Bergmann, P. D. Brown, R. G. Culp, H. B. Fouts, L. G. Haas, M. A. Kaplan, Seniel Ostrow, Ben Rosenfeld, Joseph Rudick, Morris Stein, W. H. Walzer, E. M. Wuliger, and M. H. Yulman, to serve as active directors and Mr. M. I. Walzer, Mr. H. F. Kaufman and Mr. J. J. Willens to serve as inactive directors. Mr. Sidney Sutherland moved that the nominations be [fol. 1101E] closed and that the secretary be directed to cast an unanimous ballot for the election of the above directors. This motion was seconded by Mr. Rosenberg and passed. The secretary was asked to note on the record that the ballot be made.

Next Board Meeting

9. Mr. Bergmann stated there would be a meeting of the Board of Directors the following day for the purpose of organization and election of officers.

Sale of Canadian Trade-Marks

10. The following resolution was offered and adopted by the stockholders: It appearing that the company has filed applications for registration of certain trademarks of the company under the laws of the Dominion of Canada, and that the Canadian corporation known as Sealy Sleep Products, Ltd. has been organ-

ized by the company for the purpose of licensing manufacturers in accordance with Sealy's standards and specifications in Canada;

Now, Therefore, for and in consideration of these facts, It Is Hereby Resolved:

That the company shall sell to Sealy Sleep Products, Ltd. all of the company's right, title and interest, in and to all the applications presently on file in the Dominion of Canada for registering in Canada certain trade-marks of the company, and such other applications as may, from time to time, be filed by the company.

Further Resolved:

That the purchase price of such applications and of the right to use such trade-marks in Canada is hereby fixed at $100,000.00 for the marks presently on application or in process of application.

Further Resolved:

That the officers and directors of the company be and they are hereby authorized and directed to take the necessary action to consummate such transfer and sale, including the execution of all necessary documents, instruments, etc., evidencing the same, the terms of payment to be fixed by the Board of Directors or Executive Committee not to exceed twenty years.

There being no further business before the meeting it was closed at 2:00 P. M.

——,——President.

[fol. 1102E] Balance Sheet

Sealy Incorporated as of June 30, 1954 After Audit

Assets

Current			
Cash		$ 3,893.48	
Accounts Receivable			
Royalty	$ 4,228.84		
General	203,792.05	208,020.89	
Notes Receivable		13,617.64	
Total Current Assets			$225,532.01
Investments			
American T. & T. Co. (225 shares—Market Value ($35,100.00)		$ 34,574.95	
Posture Products, Inc. (410 pref. 1,410 common)		41,335.00	
Sealy Sleep Products, Ltd. (1,450 shares)		1,492.20	77,402.15
Other Assets			
Notes Receivable			
Posture Products, Inc.		$ 55,000.00	
Sealy Sleep Products, Ltd.		4,986.64	
Advances to officers		1,200.00	
Floor Samples		5,019.80	
Accrued Interest (Posture Products)		1,000.00	67,206.44
Fixed			
Leasehold improvements	$110,686.87		
Less: Amortization	21,635.49	$ 89,051.38	
Office Furniture & Fixtures	$ 27,758.70		
Less: Amortization	6,096.50	21,672.20	110,723.58
Patents & Trademarks			150,000.00
Prepaid Assets			
Rent		$ 8,779.17	
Airline Deposit, insurance, etc.		1,461.29	10,240.46
			$641,104.54

[fol. 1104E] President's Report to Stockholders Sealy, Incorporated as of the Close of the Fiscal Year Ended June 30, 1954.

"In this report your President will briefly state pertinent facts regarding the corporate structure, financial position, sales progress and other activities of your corporation for the fiscal year which ended on June 30, 1954."

Corporate Organization

The corporation has an authorized capital of $250,000.00 consisting of 2,500 shares of common stock, of a par value of $100.00 per share. As of June 30, 1954, 2431 shares of this stock had been issued, of which 959 shares was classified as Treasury stock. Since June 30, 1954, all of the remaining 69 shares of unissued stock was sold. In addition, 359 shares of the 959 shares of stock classified as Treasury Stock was offered to stockholders on a preemptive basis. All of the stock so offered was purchased except 61 shares which was divided equally on a per plant basis. There remains, as of the date of this report, only 600 shares of Treasury Stock which has not been offered for sale. The Board of Directors on September 20, 1954 passed a resolution that the remaining 600 shares of stock could only be sold on the basis of the pre-emptive rights of the then existing stockholders.

Financial Condition

Assets

Current Assets, consisting of cash, notes and accounts receivable, amounting to $225,532.01, are more than sufficient to cover the entire amount of Liabilities of $187,460.74. All of the notes and accounts receivable are current.

Investments consisting of stock of the American Telephone & Telegraph Company, Posture Products, Inc. and Sealy Sleep Products, Ltd. amounted to $77,402.15.

The investment of certain funds in the stock of the American Telephone & Telegraph Company and Posture

Products, Inc. is for the purpose of fulfilling the corporation plan of accruing an investment, over a period of years, of $150,000.00, so that the Asset of Patents and Trademarks will be represented by an actual cash value.

The market value of the 225 shares of American Telephone & Telegraph Company, at the date of this report, which cost $34,574.05, is approximately $38,790.00.

[fol. 1105E] The book value of the stock owned in Posture Products, Inc. is in access of the purchased cost of $41,335.00. The estimated obtainable value of the assets of this company are far in excess to what are shown as book values. The 1410 shares of Common Stock, owned by your corporation, represents the voting control of the outstanding Common Stock of that company.

The 1450 shares of stock, owned by your corporation, in Sealy Sleep Products, Ltd. represents voting control of that corporation. This voting control is to be maintained until the purchase of the Sealy Tradename, Trademarks, in the amount of $100,000.00, is fully paid. An additional 1,250 shares of the stock of this corporation has been acquired, making a total holding as of the date of this report of 2,700 shares.

Other Assets

Notes Receivable, in the amount of $55,000.00, from Posture Products, Inc. represents cash advanced for the necessary expansion of that company, which was estimated at $150,000.00, one-half of which was to be borrowed by Posture Products, Inc. from the Sears Community State Bank for five years, the remaining half was to be advanced by Sealy, Inc. with the understanding that repayment was to await the payment of the indebtedness to the bank. The five quarterly payments due to the bank since the loan was made have been paid. Interest on the money advanced by your corporation, at the rate of 4½ and 4¾%, has been paid to December 31, 1954.

The amount of $4,986.64 shown as due from Sealy Sleep Products, Ltd. represents expenditures necessary in the organization of this company. Repayment of these advances began on July 1, 1954 at the rate of $400.00 per month.

Leasehold improvements on market spaces, directly supervised by your corporation, at Chicago, New York and

High Point are amortized, for tax purposes, over the length of the leases for the respective spaces.

The total of all of the Assets, of your Corporation, as of June 30, 1954, was $641,104.64.

Liabilities

The entire amount of current liabilities shown on the June 30, 1954 statement, amounting to $187,460.74, has been paid with the exception of $7,002.00, which represents funds advanced by the nine plants of the Eastern Division for the cost of air-conditioning of the New York space at One Park Avenue and $4,224.31 for Federal Taxes for the fiscal year ended June 30, 1954, which will be paid as they become due.

[fol. 1106E] Capital and Surplus

The total face value of the shares of outstanding stock of your corporation, which as of June 30, 1954, was $453,643.90, clearly indicates that the capital and surplus is more than sufficient to cover the obligation for the outstanding stock.

Dividends

The corporation paid all Dividends due and declared for the year at the rate of $6.00 per share. The quarterly dividend due on September 1, 1954 has been paid. The Dividend due on December 1, 1954 has been declared and will be paid on December 15, 1954.

Income

Income from Royalties paid by Licensees, amounted to $779,851.16, or an average of $65,000.00 per month. Your management goal is $1,000,000.00.

Royalties received from Posture Products, Inc. during the past fiscal year, for use of the Durolife Trademark, amounted to $24,010,23. Since this royalty is not subject to the 40% Advertising Refund Policy it is equivalent to a royalty paid by a Sealy licensee, in the amount of $40,000.00

Miscellaneous earnings, amounting to $113,546.83, represents corporation earnings from spring manufacturers for use of the Durolife Trademark, volume rebates on the purchase of Miracle Mesh, Rubber, Labels, catalogue sales,

lounge constructions and sundry supplies, all without any penalty to our licensees.

Expenditures

Expenditures in the form of national advertising and rebates to licensees for local advertising, amounted to $658,703.36. This is 85.7% of the total royalty received from licensees.

Total salaries paid to all employees, less the amount billed for engineering services, amounted to a net expenditure of $112,705.07. Miscellaneous earnings totaling $113,546.83, representing extra curricular activities by the Staff, was more than sufficient to cover the entire amount of salaries paid.

Deposit to the Employee Pension and Retirement Fund, in accordance with direction of the Board of Directors who instituted the program on March 18, 1953, was $16,800.00.

Expenditure for special legal counsel for the prosecution of corporation's suit of the Serta Associates for Trademark infringements and unfair trade practices, amounted to $4,025.72. Cost of special legal counsel employed for the defence of the patent infringement suit instituted by the Simmons Company against the corporation was $6,367.52.

[fol. 1107E] The net gain, for the year ended June 30, 1954, reported for Federal Income Taxes, on a cash basis, was $17,235.37. Provision of $4,224.31 was made for current federal taxes on the income reported.

Sales Progress

Net sales, upon which royalties are paid, from 1948 to September 30, 1954, are as follows:

1938	$10,993,255.00
1949	13,212,387.00
1950	17,454,063.00
1951	17,759,151.00
1952	25,299,792.00
1953	31,166,685.00
9 months of 1954	27,754,529.00

The above schedule clearly indicates that substantial progress is being made in our sales program. It also bespeaks

of the correctiveness of judgment of the Advertising and Merchandising Committees in the programs developed.

Showrooms

The new and larger space for the National Executive offices and the Chicago Market space was sufficiently completed in time for use during the January 1954 market. The entire program was completed well before the June 1954 market. An additional lighting program, to improve the brightness of the Sealy space in the hallway will be completed in time for the January 1955 market.

The New York market space at One Park Avenue was air conditioned during the past year.

The High Point market space has been completely refurbished and is ready for the January 1955 market.

The corporation also participates in the rental cost of the Boston and San Francisco market, this participation being the percent of the royalties paid by the participating plants (must be at least three differently owned plants) to the total royalties by all plants.

Sealy Sleep Products, Ltd.

The Canadian corporation, Sealy Sleep Products, Ltd., began operations actively during December 1953. Licensees have been established in Montreal, Toronto and Edmonton. Negotiations are being conducted for a licensee to be established in Winnipeg. Sealy sales until June 30, 1954 amounted to $215,215.00. Royalty paid to the same date was $6,456.73. Sales and royalties have continued to increase. [fol. 1108E] A modest advertising budget has been scheduled for the last half of 1954 and Sealy ads are appearing in Canadian magazines equivalent to the American Magazines such as Life, House and Garden, and the Journal of the American Medical Association. These Canadian ads appear in both English and French.

National Conventions

During the current year Sealy exhibits were staffed by the corporation at the national conventions of the American Medical Association, American Osteopathic Associa-

tion, National Chiropractic Association, and the American Academy of Pediatrics. The corporation will continue to exhibit in these national conventions during the current fiscal year.

Conclusion

In conclusion may I repeat what I said a year ago regarding the "Spirit of Sealy" because it still applies. *Most* of our people realize and are *firmly convinced* that their *individual welfare* depends upon a strong national *organization* and that individually their future will *rise* or *fall* as Sealy *rises, falters* or *falls* nationally. *Most* of our people will not leave a stone unturned to strengthen the *national effort. Most* of our people religiously follow the rule that what the majority feel is the best for Sealy they will accept individually. *This is what is leading Sealy to the top.* This is the Esprit De Corps of Sealy.

It is written "that of necessity some are chosen to lead while all others of necessity must follow". It is no different with our organization. It might be likened to that of the locomotive, its operation and the string of cars which it pulls. Sealy is the locomotive. The various committees are the firemen who do the actual work of shoveling the fuel of ideas that keep the boilers of the locomotive hot so that a sufficient supply of steam is generated to maintain our forward motion. Obviously, all cannot be firemen, some must be the cars necessary to complete our train of national endeavor, and whether they are loaded to capacity with acceptance of and enthusiasm for the speed of the locomotive, they are drawn along on the ride with very little effort on their part as compared to those who so willingly devote their time to the shoveling of the coal for our national program.

It is with this fact in mind that I offer my thanks to those who have so *faithfully* and *willingly* served during the past year. Particularly is this true for those members of the advertising and merchandising, and upholstery committees.

Respectively submitted, 11/12/54, E. H. Bergmann,
President.

[fol. 1109E] Officers and Directors—Sealy, Inc. for 1954

E. H. Bergmann
P. D. Brown
R. G. Culp
Irv Fisher
H. B. Fouts
Edger Haas
L. G. Haas
M. A. Kaplan
H. F. Kaufmann—Alternate
Ben Rosenfeld
J. R. Rudick
M. I. Walzer—Alternate
E. M. Wuliger
J. J. Willens—Alternate
W. H. Walzer
M. H. Yulman

Officers

President—E. H. Bergmann
Secretary-Treasurer—J. R. Lawrence
Vice-P.—M. A. Kaplan

Executive Committee

M. A. Kaplan, Chairman—Standing member
L. G. Haas—Standing member
P. D. Brown—Term expires 1956
W. H. Walzer—Term expires 1955
E. M. Wuliger—Term expires 1954

Nominating Committee

H. B. Fouts, Chairman
Ben Rosenfeld
M. H. Yulman

[fol. 1110E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1012

Manufacturer's Contract.

This Contract, made at Pittsburgh, in the State of Pennsylvania, this *1st* day of *September*, 1936, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and *The Ohio Mattress Co.*, an *Ohio* corporation, having a regular place of business at *Cleveland*, in the State of *Ohio*, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacturer and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, within an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and sell Sealy Products therein,

[fol. 1111E] Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy trade-name, and/or trade marks, or in any other fashion the word and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and at its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studio couches, bed springs, box springs, pillows and cushions, and will do so under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trademarks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all of its members, change said specifications and/or promulgate specifications for additional Sealy Products. When new [fol. 1112E] specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trademarks,

trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy, or which Sealy controls or has interest in, now or in the furture while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacturer, upon demand full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds (⅔) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacturer of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and pat-
[fol. 1113E]
ents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Rights to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termination or [fol. 1114E] breach of this contract, all rights given to Manufacturer hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks, and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows: The following counties of Ohio: Erie,

Lorain, Cuyahoga, Medina, Summit, Portage, Geauga, Lake, Ashtabula and Trumbull, Lucas, Ottawa and Sandusky.

Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interest of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or [fol. 1115E] controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person, partnership, association or corporation to manufacture and sell Sealy Products.

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquadated damages, $10.00 for each matress, studio couch or other Sealy Product sold or

shipped into Manufacturer's exclusive territory by Sealy, and $10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said $10.00 for each such article from said person, partnership, association or corporation.

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale [fol. 1116E] our of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next proceeding provision, Manufacturer shall pay to Sealy, upon demand, the sum of $10.00 for each matress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks, and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best effords to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on

request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

[fol. 1117E] Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to it a Sealy label embodying a Sealy trade mark or trade name. No Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels [fol. 1118E] shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy Labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of fifty labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 20:

[fol. 1119E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at

the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same [fol. 1120E] to Manufacturer, but if there is any indebtedness then owing from Manufacturer to Sealy then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto

and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy, Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

Transfers of Sealy Stock Option in Sealy to Buy Manufacturer's Stock

24. On each stock certificate or voting trustees' certificate for Sealy stock issued to Manufactureer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates, other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desire to sell or transfer, or owns—in the case of termination, at the price of $100.00 per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy, satisfactory [fol. 1121E] evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona fide offer to buy, whether such offer be for more or less than $100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period

shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturer's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of $100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " " as shown and delimited on Sealy Territories Map No. 2, attached hereto, made part hereof, and marked "Exhibit C".

[fol. 1122E] Termination Without Arbitration

26. In the event Manufacturer shall be come insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an

arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The arbitration Board may make its own investigation, and may hear both sides orally or in writing. Failure by either of the parties to take the [fol. 1123] steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu therof. The arbitrators in their decision may assess the costs of the arbitration preceedings against any or all parties thereto.

Termination to Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of SEALY to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any satisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice [fol. 1124E] should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under this Contract

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the territory herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by either of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

[fol. 1125E] In Witness Hereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By —— ——, President.

Attest:

Earl H. Bergmann, Secretary.

The Ohio Mattress Co., By Frank Wuliger.

Witness:

Dorothy F.

[fol. 1126E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1013

This Agreement Made at Pittsburgh, Pa., this 1st day of December, 1937, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", and The Ohio Mattress Company, an Ohio corporation, having a regular place of business at Cleveland, in the State of Ohio, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy and Manufacturer on the 1st day of September, 1936, executed at Pittsburgh, Pennsylvania, a certain contract called "Manufacturer's Contract", providing for the manufacture and sale of Sealy products under specified terms and conditions, and within a limited territory therein defined; and

Whereas: Sealy and Manufacturer are desirous of adding certain territory to that heretofore referred to, under certain terms and conditions, and extending the terms and provisions of the aforesaid contract to said additional territory, under certain terms and conditions, for a time hereinafter limited;

Now Therefore, In consideration of the promises and mutual agreements herein contained, it is hereby agreed between the parties as follows:

1. All of the rights, benefits, and privileges conferred upon Manufacturer by the aforesaid contract for the territory hereinbefore referred to, are hereby extended and granted to Manufacturer for the following additional described territory:

[fol. 1127E] In Michigan:

Washtenaw, Monroe, Wayne, Oakland, Macomb, Saint Clair, Lapeer, Gennessee, Livingston, and Lenawee.

* * * * * * *

with the same force and effect henceforth as if said additional territory had been originally included in said contract, provided, however, that the said rights, benefits, and privileges may be terminated in and with respect to the

above described additional territory at any time in the future when Sealy desires to terminate the same, by Sealy giving Manufacturer thirty days notice of intention to terminate, after which time the said rights, benefits and privileges in and with respect to the said additional territory shall altogether cease and determine, and, at all events, this agreement shall terminate automatically and simultaneously when the aforesaid "Manufacturer's Contract", executed on the 1st day of September, 1936, is terminated.

2. All of the duties, obligations, and liabilities imposed upon and assumed by Manufacturer by the aforesaid contract for the territory originally granted, are hereby extended, imposed upon, and assumed by Manufacturer within and with respect to the above described additional territory, with the same force and effect henceforth as if said additional territory had been originally included in said contract, for the same period of time as Manufacturer is permitted by Sealy to exercise the hereinbefore referred to rights, benefits, and privileges under the terms of paragraph 1 thereof, or until the aforesaid "Manufacturer's Contract" is terminated, whichever is the sooner, but any liability accrued at the time of termination shall remain in full force and effect.

3. No additional "Minimum consideration" over that required by paragraph 22 of said "Manufacturer's Contract" shall be payable by Manufacturer because of the additional population contained within said new temporary territory.

[fol. 1128E] 4. This contract shall become binding and effective from the date of its execution by the parties hereto.

5. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound hereby, the day and year first above written.

Sealy, Incorporated, By H. E. Wolf, President.

Attest:

R. G. Culp, Assistant Secretary.

The Ohio Mattress Co. (Seal). By Frank Wuliger, Treas.

Witness:

E. H. Bergmann.

[fol. 1129E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1014

MANUFACTURER'S CONTRACT

This Contract, made at Chicago, in the State of Illinois, this *1st* day of *May, 1941,* by Sealy, Incorporated, a Delaware corporation, hereinafter called "SEALY", and *Made-Wel Bedding Co. Morris Lewis & Samuel Hertz—Proprietors* a *New Jersey* (Corporation, Partnership, etc.) having a regular place of business at *43 Aspen St. Passaic, New Jersey* hereinafter called "Manufacturer":

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, advertising, merchandising and general cooperative effort bedding and similar products; and is engaged in national in the manufacturing and sale of Sealy products; and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of use of Sealy's trade names, trade-marks, copyrights, manufacturing processes, national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein

Now, Therefor, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto, as follows:

[fol. 1130E] Definition of Sealy Products

1. As used in this contract the term "Sealy Products" shall mean all mattresses, including ensembles, and studio couches, divans, studio lounge beds, sofa beds, matching chairs for the last four mentioned, bed springs, box springs, box springs, foundation units, pillows, cushions, comforts and similar and related articles manufactured or

to be manufactured and/or sold, bearing or having affixed thereto in any manner Sealy's trade name and trade-mark "Sealy" in any form, any of its other trade-marks, whether registered or not, including, among others, Sealy Rest, Truease, Texlan, Luxel, Sunspun, Durolite, Posture Pillow, Fast Asleep, Sleep Charm, Natural Rest, Air Vent, Sleep Joy, Sealy Kraft, Airlite, and Enchanted Nights.

Right to Manufacture and Sell

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract, to manufacture Sealy Products within the territory hereinafter defined under and strictly in accordance with Sealy's specifications, patents, processes, exclusive rights, and licenses, now owned or controlled of hereafter owned or controlled by Sealy, and to sell the same within the territory hereinafter defined under Sealy's trade name, trade marks and copyrights.

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name but only in connection with the manufacture and sale of Sealy Products and only during the life of and while fully complying with this contract. If such word is used in Manufacturer's corporate or business name, said name shall be placed, by label or otherwise, only on Sealy Products made and sold in accordance with the provisions of this contract, and shall be advertised or otherwise represented only in connection with the manufacture and sale of Sealy Products in accordance with the provisions of this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trademarks, exclusive rights and licenses in the form and in the manner prescribed by Sealy but only while this contract is in effect and in accordance therewith. On any termination of this contract, Manufacturer agrees that all rights given it by this contract shall terminate that it will forthwith [fol. 1131E] drop the name "Sealy" from its corporate or business name, and that it will not thereafter use or advertise the word "Sealy" or any of the Sealy patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the trade name and trade-mark "Sealy" in all forms, of the other trade marks

hereinbefore mentioned, and of the patents, copyrights and exclusive licenses, under and by which Sealy Products have been and are to be manufacturered and sold, and disclaim any interest therein and any right thereto to any right to manufacture or sell any of said products except in accordance with this contract.

4. Sealy agrees to use and expend at least one half of the under this contract and similar contracts which Sealy has amounts paid to it as consideration (Paragraph 20 and 21) with its other manufacturers, for national and other advertisements, merchandising and general sales promotion of Sealy Products throughout the United States, it being understood that Sealy's overhead expense, such as salaries, office and administration costs are part of such advertising merchandising and sales promotion above referred to, as well as the time at which expenditures shall be made, shall lie within the discretion of Sealy's Board of Directors or Executive Committee thereof.

5. Manufacturer agrees that, while this contract is in force, all materials, patents, designs, specification, construction, processes, copyrights, trade-marks and trade names, and the right to use same by license or otherwise which are or shall become the property of Sealy or in which Sealy shall have or procure the right of exclusive use, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

Specifications

6. A true and correct copy of the specifications for the Sealy Products is attached hereto, made part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications or devise and establish specifications for [fol. 1132E] new or additional Sealy Products. When specifications are thus changed and written notice of such change, together with the copy of the specifications as changed is given to manufacturer, such specifications as changed shall become part of this contract and after thirty days have elapsed after said notice, Manufacturer shall manufacture the particular Sealy Product involved strictly

in accordance with said specifications as changed. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured or sold by Manufacturer. When specifications have been adopted for new or additional Sealy Products, Manufacturer shall manufacture same strictly in accordance with said specifications.

Methods and Processes

7. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and direction as to the best methods of manufacturing Sealy Products. Manufacturer Agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy, or new ones established by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or charged specifications.

Supervision by Sealy

8. Sealy shall exercise supervision and control over the Manufacture of all Sealy Products by Manufacturer, so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy on demand, specimens of products manufactured under this contract and samples of the material used, and will afford duly accredited representatives, of Sealy access to its factories and warehouses at reasonable times.

[fol. 1133E] Right to Advertise

9. While this contract is in effect, Manufacturer may advertise Sealy Products by means employing and embodying Sealy's trade names, trade-marks and copyrights. However, Manufacturer will discontinue any advertising of Sealy Products which is objectional to Sealy, on notice by Sealy, and will not repeat such objectional advertising or

advertising similar thereto. Manufacturer agrees not to advertise products other than Sealy or Crestline Products by statements that they are "Made by Makers of Sealy Products" or words of similar import unless specifically authorized by the President of Sealy or its Executive Committee. Manufacturer agrees to use its best efforts to prevent such and other advertising by dealers and other retailers which is objectional to Sealy. If such objection advertising or representation is not discontinued immediately, Manufacturer agrees to discontinue at once the furnishing of any Sealy merchandise to offending party. Manufacturer further agrees not to advertise or represent any product as a Sealy Product unless it is such within the meaning of this contract, and agrees to use its best efforts to prevent any advertisements or representation by dealers or retailers that products are Sealy Products when they are not made in accordance with the provisions of this contract. Manufacturer agrees that he will in no manner trade on the prestige of Sealy or make use of the fact that he is a manufacturer of Sealy merchandise except in the furtherance of Sealy interests. Use of Sealy name, prestige or trademarks into any territory outside of territory covered by this contract shall be considered a breach of contract, and Sealy license as authorized herewith may be terminated by authority of the Executive Committee on written notice.

Patent, Trade-Mark Infringement

10. Sealy agrees to defend, at its expense, any and all suits against Manufacturer for or on account of any alleged infringement while this contract is in force, of any patent, copyright, trade-mark or trade name, resulting from the manufacture or sale by Manufacturer of any [fol. 1134E] of any Sealy Products, if the latter were made strictly pursuant to and in accordance with the provisions of this contract including the Sealy Specifications.

11. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade names, trademarks, methods or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Territory

12. The exclusive territory hereby allotted to Manufacturer is as follows:

The following territory in the state of New Jersey. Counties—

Essex	Hunterdon
Sussex	Somerset
Passaic	Middlesex
Bergen	Union
Hudson	Monmouth
Morris County	Mercer
Warren	Oceon

The following territory in the State of New York. Counties—

Rockland	Sullivan
Orange	Richmond

It is further understood that the territory above outlined must be worked thoroughly by the Manufacturer in the interest of Sealy. Failure to perform in line with this understanding in any part of the territory causes said part or parts of said territory to revert automatically to Sealy, unless said condition is rectified to the satisfaction of the Executive Committee within thirty (30) days following written notice from Sealy.

[fol. 1135E] Sales in or Shipments into Manufacturer's Territory

13. Sealy will not manufacture or sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory set aside to Manufacture, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, $10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy, and $10.00 less the cost of collection of same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association

or individual, which has in effect a contract with Sealy, identical or similar to this one: provided, that Sealy has suceeded in collecting the said $10.00 for each such article from said person partnership, association or corporation. This section does not apply to sale of Furniture Market samples by Sealy, Incorporated.

Restriction Upon Sales by Manufacturer

14. Manufacturer shall not sell, ship or deliver Sealy Products outside if its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy products to any mail order house or jobber without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, on demand, the sum of $10.00 for each Sealy product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

[fol. 1136E] Manufacturer's Good Faith

15. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade-names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of any of the Sealy labels, brands, materials, without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears the label, trade-mark or trade name which is nationally advertised in competition with Sealy Products.

Inferior Products

16. Manufacturer will manufacture and sell Sealy Products strictly in accordance with this contract, and will pay to Sealy, on request, the full retail price of any Sealy Products sold by it to any purchaser, on the production of evidence that said product was not made in accordance with

this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged and the quality standard thereof endangered if they are sold at cut retail prices. Manufacturer, therefore, agrees to contract, orally or in writing, with each retailer to whom it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefor that may be established by Sealy, from time to time, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

[fol. 1137E] Records and Reports of Manufacturers

18. Manufacturer shall keep detailed, accurate and complete records and accounts of all Sealy Products made by it during each month and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of the statements from said records and accounts, at any and all reasonable times, Manufacturer agrees to make up and sent to Sealy, on or before the 15th day of each month, a true and complete report of all of said products made by it during the preceding month or portion thereof if this contract was not in effect for the whole month.

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefore by Sealy. Neither the name Sealy nor any Sealy Trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label containing the name "Sealy" in any form, or any other trade-mark or trade-name owned by Sealy to a product

other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other way represent that a product not made strictly pursuant to and in accordance with this contract, is a Sealy Product, or that a product not bearing the Sealy label prescribed therefor by Sealy, is a Sealy Product. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy. This license shall be effective so long as this contract is in force and effect and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

[fol. 1138] For Mattresses:

Sealy Rest Tuftload—Truonso—Super Rest—Natural Rest Airvent—Enchanted Nights—Tuftless—Sunspun—Sleep Ensemble Mattress Unit—Sleep Charm—Airlite Mattress Unit—and Super Sleep Ensemble Mattress Unit, and any other names hereinafter recorded as Sealy trade names for Sealy Products.

For Upholstered Box Springs:

Sealy Rest, Truonse—Super Rest—Natural Rest—Airvent Enchanted Nights—Sleep Charm—Sunspun—Tuftless—Airlite Foundation—Sleep Ensemble Foundation Unit—Super Sleep Ensemble Ensemble Foundation Unit, etc.

Sealy may require other or supplementry labels to be placed on Sealy Products, and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the name of the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer IN the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels shall send to Sealy a regular duly executed order on the said designated label manufacturer or distributor for the amount and kind of labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of of Paragraph 20 hereof. When those conditions

are complied with, Sealy will promptly transmit the order to the designated label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

[fol. 1139E] 20. Sealy shall fix, for the purpose of this Paragraph the wholesale price applicable to each Sealy Product, and Manufacturer shall pay to Sealy, by the procedure prescribed in Paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under provisions of said Paragraph 19:

Labels for mattresses or upholstered box springs falling within the following wholesale price classification established by Sealy:

Class I	at $11.00 or less	25¢ each
Class II	from $11.01 to $13.00	35¢ "
Class III	" 13.01 to 15.50	50¢ "
Class IV	" 15.51 to 17.75	75¢ "
Class V	" 17.76 to 23.50	$1.00 "
Class VI	" 23.51 to 28.75	1.50 "
Class VII	" 28.76 to 35.75	2.00 "
Class VIII	" 35.76 to 47.50	3.00 "
Class IX	" 47.51 and up	5.00 "
Hotel Special Model A. priced by Sealy at wholesale at $19.75		50¢ each
Hotel Special Model B. priced by Sealy at wholesale at $16.75		35¢ each
Little Darling Crib Mattress, priced by Sealy at wholesale at $3.75		10¢ each

Labels for Crestline mattresses and box springs falling within the following wholesale price classifications established by Sealy:

Class A.	from $ 7.51 to $ 8.50	10¢ each
Class B.	" 8.61 to 9.50	15¢ "
Class C.	" 9.51 to 10.50	15¢ "
Class D.	" 10.51 to 11.00	20¢ "
Class E.	" 11.01 to 13.00	20¢ "
Class F.	" 13.01 to 15.50	20¢ "
Class G.	" 15.51 to 17.75	25¢ "
Class H.	" 17.76 to 23.50	25¢ "

Labels for Promotional mattresses and box springs falling within the following wholesale price classifications established by Sealy:

Class I	at	$11.00 or less	25¢ each
Class II	from	11.01 to $13.00	35¢ "
Class III	"	13.01 to 15.50	50¢ "
Class IV	"	15.51 to 17.75	75¢ "
Class V	"	17.78 to 23.50	1.00 "
Class VI	"	23.51 to 28.75	1.50 "
Class VII	"	28.76 to 35.75	2.00 "
Class VIII	"	25.76 to 47.50	3.00 "
Class IX	"	47.51 up	5.00 "

Labels for Promotional mattresses and box springs falling within the following wholesale price classifications established by Sealy:

[fol. 1140E] Labels for standard studio couches falling within the following wholesale price classifications established by Sealy:

Class I	at	$24.50 or less	25¢ each
Class II	from	24.51 to $29.50	50¢ "
Class III	"	29.51 to 39.50	75¢ "
Class IV	"	39.51 to 49.50	1.00 "
Class V	"	49.51 and up	1.50 "

Labels for Crestline studio couches falling within the following wholesale price classifications established by Sealy:

Class A.	at	$24.50 or less	25¢ each
Class B.	"	24.51 to $28.50	50¢ "
Class C.	"	29.51 to 39.50	75¢ "
Class D.	"	39.51 to 49.50	1.00 "
Class E.	"	49.51 and up	1.50 "

Labels for Promotional Studio divans falling within the following wholesale price classifications established by Sealy:

Class I	at	$24.50 or less	25¢ each
Class II	from	24.51 to $29.50	50¢ "
Class III	"	29.51 to 39.50	75¢ "
Class IV	"	39.51 to 49.50	$1.00 "
Class V	"	49.51 and up	1.50 "

Until further notice the Royalty on all Studio Couches is to be reduced to 20¢ per studio. The Corporation reserves the right to reinstate the contractual basis when desired.

For labels on any products not herein specified Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

Minimum Consideration

21. (a) As consideration to Sealy under this contract Manufacturer agrees to pay Sealy while this contract is in effect, through payments on labels as provided in Paragraph 19 and 20 thereof, a Royalty consideration of $ (Grace) per month in advance, for the first three (3) months immediately following the effective date of this contract: *$150.00* per month, in advance for the next three months: *$150.00* per month, in advance, for the next six (6) months. Thereafter for the duration of this contract he shall pay to Sealy a monthly royalty of 2% on his Gross Sales after deduction of goods sold to bona fide jobbers and mail order houses approved by Sealy. Such Royalty, however, in no case to be

[fol. 1141E] less than $150.00 per month, payable on or before the 15th day of the month following when said sales were effected by Manufacturer. In the Event This Contract is terminated other than at the end of a month a proportionate part of the minimum monthly average shall be due for the portion of the month already elapsed. At the end of one (1) year from *August 1st* 1941, if Manufacturer's payments to Sealy under Paragraph 19 and 20 hereof exceed the product of the monthly minimum multiplied by 12, there shall be no credit carried over to a succeeding year on the minimum required for that year. When this contract is terminated at the end of three (3) years or otherwise, any excess over the minimum average shall not be a credit or a claim against Sealy in favor of Manufacturer. It is understood and agreed that all payments on labels made to Sealy under the provisions of Paragraph 19 and 20 by Manufacturer prior to *August 1st* 1941, shall be credited as if made between *August 1st* 1941, and *August 1st* 1942.

21. (b) Manufacturer agrees to pay for all advertising materials and other articles furnished by Sealy or by duly authorized sources designated by Sealy. It is further understood and agreed that Sealy may ship such advertising or other materials as it deems necessary for the presentation and walfare of its business, and such items so shipped shall be paid for by Manufacturer within thirty (30) days from the date of shipment. Any failure to pay shall constitute a breach of contract by Manufacturer.

Option in Sealy to Buy Labels

22. On any termination of this contract, Sealy shall have an option for a period of thirty (30) days from such termination to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which labels Manufacturer has on hand at that time and not already placed on Sealy Products. Payment for any labels by Sealy to Manufacturer is to be made on the basis of prices which Manufacturer actually paid the label manufacturer for the same.

[fol. 1142E] Automatic Termination of Contract

23. In the event the Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization or adjustments with creditors and other under the Bankruptcy Acts of the United States, suffers a receiver to be appointed, assigns its assets for the benefit of creditors, suspends business or dissolves, then automatically and simultaneously this contract shall terminate.

Termination

24. In the event either party defaults under or breaches any of the provisions of this contract, then the other may give fifteen (15) days notice to it of intention to terminate this contract unless the said default or breach is made up or remedied in full within said time. If the said default or breach is not made up or remedied within said time, then said party may notify the other that it has terminated this contract, and the same shall as of the date of receipt of said last notice, be terminated. Manufacturer may terminate this contract after giving Sealy six (6) months' notice of intention so to terminate. Such notice once given shall be irrevocable, and this contract shall terminate at the end of said six (6) months without further action by either party.

Termination no Release from Obligations already Accrued

25. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default

under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

[fol. 1143E] Assignment of Rights under This Contract

26. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer its rights, in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

Manufacturer Not Sealy's Agent

27. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations, made by Manufacturer (except as the same may be elsewhere herein expressly provided for.)

Notices

28. All notices provided for or to be given under this contract shall be in writing.

29. This contract shall be deemed separable and if any portion thereof shall be held invalid for any reason, the remainder shall not thereby invalidated but shall remain in full force and effect.

Effective Date

30. This contract is executed in duplicate.

31. This contract shall not become binding or effective until a copy thereof, executed by Manufacturer shall be delivered by Manufacturer to Sealy at Chicago, Illinois. The date stated at the beginning of this contract shall be prima facie evidence of the date of delivery to Sealy. This contract shall remain in force and effect, unless sooner terminated under the terms of Paragraph 23 or 24 thereof, until *August 1st* 1944.

[fol. 1144E] In Witness Thereof, the parties by their duly authorized officers or agents, have caused this contract to be executed, in duplicate, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By President, Jacob R. Haas (Signed.)

Attest:

——, ——.

Made-Wel Bedding Co., Morris Lewis & Samuel Hertz, (Proprietors.)
Morris Lewis (Signed), Samuel Hertz (Signed.)

Witness:

——, ——.

Harry Kaplin (Signed)

[fol. 1145E] In United States District Court

Government's Exhibit No. 1015

Reading

This is to certify that the attached are true and correct copies of Sealy, Inc. Manufacturer's Contract of August 1st, 1938.

The Fred G. Hodges Bedding Company, Theo C. Engelhardt, Treas.

[fol. 1146E] MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 1st day of August, 1938, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy," and The Fred G. Hodges Bedding Company, a Pennsylvania corporation, having a regular place of business at Reading, in the State of Pennsylvania, hereinafter called "Manufacturer,"

Witnesseth:

Whereas, Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding and similar products; and is engaged in national advertising, merchandising and general cooperative effort in the sale of Sealy Products; and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of Sealy's national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein,

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties as follows:

[fol. 1147E] 1. As used in this contract the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, sofa beds, pillows and cushions manufactured or to be manufactured and/or sold, bearing or having affixed thereto in any manner Sealy's trade name and trade-mark "Sealy" in any form, any of its other trade-marks, now or later registered, including Airlite, Sealy Rest, Truease, Texlan, Posture Pillow, Luxel, Sunspun and Durolife, or any of its labels, and shall mean all of the aforesaid named products in the contruction or manufacture of which any of Sealy's patents are used, or in which any material is used which Sealy now or later

has the exclusive right to use or authorize the use, including the product "Nukraft", a product of the B. F. Goodrich Rubber Company.

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract, to manufacture Sealy Products to-wit: Mattresses, studio couches, bed springs, sofa beds, pillows and cushions, and will do so within the territory hereinafter defined, under and strictly in accordance with Sealy's patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under Sealy's trade name, trade-marks, and copyrights. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured and/or sold by Manufacturer.

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trade-marks, exclusive rights and licenses but only during the life of and while fully complying with this [fol. 1148E] contract. On any termination of this contract all rights given to Manufacturer hereunder shall cease, and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of Sealy's patents, copyrights, trade names, trade-marks, labels or exclusive licenses. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents copyrights, trade-marks, trade names and exclusive licenses, under and by which Sealy Products have been and are to be manufactured and/or sold, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract.

4. Sealy agrees to use at least one-half of the amounts paid to it as label revenue (par. 20) and minimum consideration (par. 21) under this contract and similar contracts which Sealy has with its other Manufacturers, for

national and other advertisement, merchandising and general sales promotion of Sealy Products throughout the United States, it being understood that Sealy's overhead expense such as salaries, office and administration costs are part of such advertising, merchandising and sales promotion expense. The determination of the nature of the advertising, merchandising and sales promotion above referred to as well as the time at or during which the expenditures shall be made shall lie, within the limits hereinafter stated, in the discretion of Sealy's Board of Directors or Executive Committee thereof. However, Sealy agrees to expend the aforesaid one-half for the purposes aforesaid within at least six months following the end of any three month period (while this contract is in effect) for which said income is computed for the purposes of this paragraph. Manufacturer, as a stockholder of Sealy, hereby agrees that Sealy may use and apply as great proportion of its income in excess of said one-half as its Board of Directors or Executive Committee thereof deems advisable for said purposes.

[fol. 1149E] 5. Manufacturer agrees that all materials, patents, designs, specifications, copyrights, processes, trademarks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy or which Sealy controls or has interest in, now or in the future, while this contract is in force, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

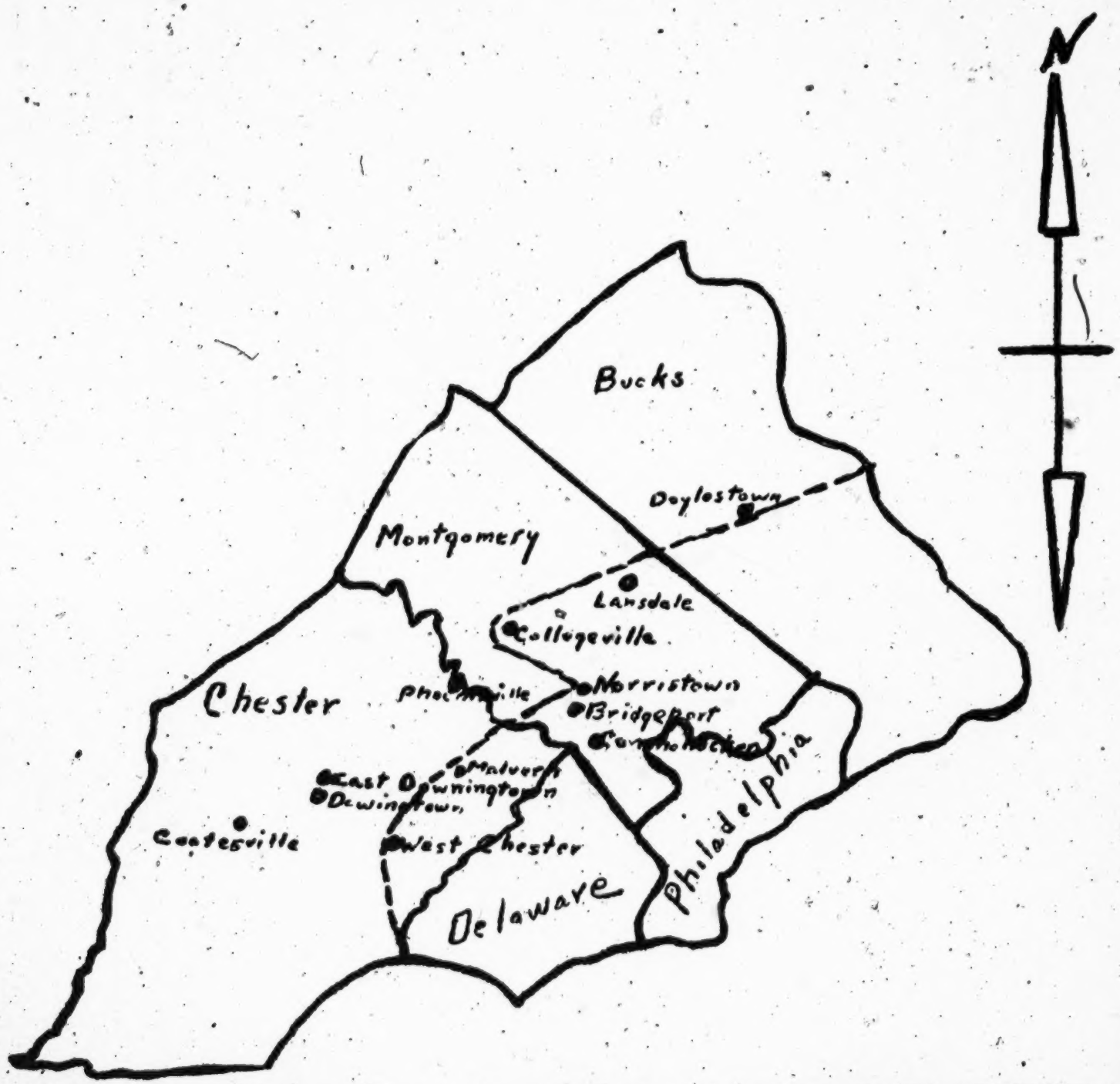
6. A true and correct copy of the specifications of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications and/or promulgate specifications for additional Sealy Products. When new specifications are thus prepared or the specifications are thus changed for any Sealy Product and written notice thereof with a copy thereof is given to Manufacturer, such new or changed specifications shall become a part of this contract, and after 30 days have elapsed after said notice Manufacturer

shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

7. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

8. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with [fol. 1150E] Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy, or demand, specimens of

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READING: All that section North and West of boundary shown, including Coatesville, Downingtown, Phoenixville, Doylestown.

PHILADELPHIA: All that section South and East of boundary line, including West Chester, Malvern, Norristown, Collegeville, Lansdale.

[fol. 1151E] 13. Sealy will not manufacture nor sell, nor will it, without consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand as liquidated damage $10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy and $10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided that Sealy has succeeded in collecting the same $10.00 for each such article from said person, partnership, association or corporation.

14. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it has reasonable cause to believe that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of any of the provisions of this paragraph, [fol. 1152E] Manufacturer shall pay to Sealy, upon demand, the sum of $10.00 for each Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

15. Manufacturer shall not aid, abet or assist any other corporation, partnership, or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of, any of the Sealy Labels, brands, or materials without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears a label, trade name or trade-mark which is nationally advertised, or nearly so, in competition with Sealy Products.

16. Manufacturer will manufacture and sell Sealy Prod-

ucts strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged if they are sold at cut retail prices. Manufacturer, therefore, agrees to [fol. 1153E] contract, orally or in writing, with each retailer to whom it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefore fixed by Sealy, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

18. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefor by Sealy. Neither the Sealy name nor any Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label, copyrighted or otherwise, containing the name "Sealy" or any Sealy trade-mark or trade name to a product other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other

way represent that a product not made strictly pursuant to [fol. 1154E] and in accordance with this contract, is a Sealy Product.

Sealy hereby licenses Manufacturer to have copies made of the labels copyrighted by Sealy and to obtain the same, but only in the manner and according to the procedure hereinafter provided for, and to use the same. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy, and none shall be placed on or used in connection with any product not made strictly pursuant to and in accordance with this contract. This license shall be effective so long as this contract is in force and effect, and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

For Mattresses:

Sealyrest, Tuftless, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Tuftless, Sunspun, Sleep Ensemble Mattress Unit, Sleep Charm, Airlite Mattress Unit, Super Sleep Ensemble Mattress Unit.

For Upholstered Box Springs:

Sealyrest, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Sleep Charm, Sunspun, Tuftless, Airlite Foundation Unit, Sleep Ensemble Foundation Unit, Super Sleep Ensemble Foundation Unit.

Sealy may require other and additional labels to be placed on Sealy Products and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels, [fol. 1155E] shall send to Sealy, in duplicate, a regular duly executed order on the said designated label manufacturer or distributor for the amount and kind of labels desired,

together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 20 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels diret to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy labels under this paragraph shall be for a quantity of not less than 25 labels of the particular class ordered, as the same are classified in paragraph 20 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of 25 labels of each class of labels ordered.

20. Sealy shall fix, for the purpose of this paragraph, the wholesale price applicable to each Sealy Product, and Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 19:

Labels for mattresses or upholstered box springs falling within the following wholesale price classification estab-
[fol. 1156E] lished by Sealy:

Class I	at $11.00 or less	25¢ each
Class II	from $11.01 to $13.00	35¢ "
Class III	" $13.01 to $15.50	50¢ "
Class IV	" $15.51 to $17.75	75¢ "
Class V	" $17.76 to $23.50	$1.00 "
Class VI	" $23.51 to $28.75	$1.50 "
Class VII	" $28.76 to $35.75	$2.00 "
Class VIII	" $35.76 to $47.50	$3.00 "
Class IX	" $47.51 and up	$5.00 "
Hotel Special Model A, priced by Sealy at wholesale at $19.75		.50¢ each
Hotel Special Model B, priced by Sealy at wholesale at $13.75		.35¢ each
Little Darling Crib Mattress, priced by Sealy at wholesale at $3.75		.10¢ each

Labels for Crestline Mattresses and Box Springs falling within the following wholesale price classifications established by Sealy:

Class A	from	$ 7.51 to $ 8.50	10¢ each
Class B	"	$ 8.51 to $ 9.50	15¢ "
Class C	"	$ 9.51 to $10.50	20¢ "
Class D	"	$10.51 to $11.50	25¢ "
Class E	"	$11.51 to $13.75	35¢ "
Class F	"	$13.76 to $15.50	50¢ "
Class G	"	$15.51 to $17.75	75¢ "
Class H	"	$17.76 to $23.50	1.00 "
Class J	"	$23.51 and up	1.50 "

Labels for Promotional Mattresses and Box Springs falling within the following wholesale price classifications established by Sealy:

Class I	at	$11.00 or less	25¢ each
Class II	from	$11.01 to $13.00	35¢ "
Class III	"	$13.01 to $15.50	50¢ "
Class IV	"	$15.51 to $17.75	75¢ "
Class V	"	$17.76 to $23.50	1.00 "
Class VI	"	$23.51 to $28.75	1.50 "
Class VII	"	$28.76 to $35.75	2.00 "
Class VIII	"	$35.76 to $47.50	3.00 "
Class IX	"	$47.50 and up	5.00 "

Labels for Standard Studio Couches falling within the [fol. 1157E] following wholesale price classifications established by Sealy:

Class I	at	$24.50 or less	25¢ each
Class II	from	$24.51 to $29.50	50¢ "
Class III	"	$29.51 to $39.50	75¢ "
Class IV	"	$39.51 to $49.50	1.00 "
Class V	"	$49.51 and up	1.50 "

Labels for Crestline Studio Divans falling within the following wholesale price classifications established by Sealy:

Class A	at	$24.50 or less	25¢ each
Class B	from	$24.51 to $29.50	50¢ "
Class C	"	$29.51 to $39.50	75¢ "
Class D	"	$39.51 to $49.50	1.00 "
Class E	"	$49.51 and up	1.50 "

Labels for Promotional Studio Divans falling within the following wholesale price classifications established by Sealy:

Class I	at	$24.50 or less	25¢ each
Class II	from	$24.51 to $29.50	50¢ "
Class III	"	$29.51 to $39.50	75¢ "
Class IV	"	$39.51 to $49.50	1.00 "
Class V	"	$49.51 and up	1.50 "

For labels on any products not herein specified, Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

21. (a) Manufacturer agrees to pay to Sealy for Each month during which this contract is in effect, a minimum consideration of $100.00 per month for the 22 months immediately following the effective date of this contract.

(b) The aforesaid minimum consideration per month shall be reduced by the amount paid for labels during the particular month at the rates and under the terms of paragraph 20 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

(c) Not later than the fifteenth day immediately following the end of one month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 20 and of this para-
[fol. 1158E] graph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (A) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 20 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable thereafter under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer,

but if there is any indebtedness then owing from the Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

(d) Manufacturer agrees to pay for all advertising materials and other articles furnished by Sealy and accepted by Manufacturer at the agreed price, or if there is no agreed price, the reasonable cost thereof within thirty (30) days from the date of delivery of the same, and any failure so to pay shall constitute a breach of this contract by Manufacturer.

22. On any termination of this agreement, Sealy shall have an option for a period of thirty days from such termination to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which Manufacturer has on hand at that time and not already placed on Sealy Products, at such prices as Manufacturer actually paid the label manufacturer for the same.

23. In the event Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under section 77B of the Bankruptcy Act, suspends business, winds up its business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously this contract shall terminate.

24. In the event either party defaults under or breaches any of the provisions of this contract, then the other may [fol. 1159E] give fifteen (15) days notice to it of intention to terminate this contract unless the said default or breach is made up or remedied in full within said time. If the said default or breach is not made up or remedied within said time, then said party may notify the other that it has terminated this contract, and the same shall, as of the date of receipt of said last notice, be terminated. Manufacturer may terminate this contract after six months' notice of intention so to terminate. Such notice once given shall be irrevocable, and this contract shall terminate at the end of said six months without further action by either party. Also, the obligation of Sealy contained in paragraph 27 hereof, may be terminated and cancelled by Sealy, although there has been no breach of this contract by Manufacturer or occurrence of any other conditions under which the same

would be terminated, by giving Manufacturer sixty days' notice of its intention so to terminate and cancel, but such act by Sealy shall not operate to terminate or cancel any of the other provisions of this contract.

25. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to Notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

26. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

27. Inasmuch as Manufacturer is required to be a stockholder of Sealy so long as this contract remains in effect, Sealy shall therefore transfer to Manufacturer, subject to all the terms and conditions hereinafter set forth, two (2) shares of Sealy's Treasury Stock upon execution of this contract, one (1) share on the first day of October, 1938, [fol. 1160E] and one (1) share at each interval of sixty days thereafter so long and only so long, however, as this contract is otherwise in force and effect.

28. Sealy shall have a lien upon the shares of its Treasury Stock transferred to Manufacturer pursuant to this contract for any indebtedness which may become due it by Manufacturer, whether said indebtedness be matured or unmatured, already accrued or accruing later and whether it be contractual or otherwise. Said shares shall not be assignable or transferable by Manufacturer or by operation of law so as to impair said lien, and Sealy may refuse to transfer the said shares on its books in order to preserve said lien. Sealy may foreclose and enforce said lien by notifying Manufacturer of the amount of indebtedness existing at the particular time and crediting against the same the sum of Five ($5.00) Dollars per share for each share then standing in Manufacturer's name on Sealy's books.

Such act by Sealy shall constitute foreclosure of the said lien and revest and retransfer title to said shares in Sealy automatically and without further proceedings, and Sealy shall have all proper methods, legal and equitable, of enforcing the return by Manufacturer of the particular certificates representing the shares transferred under this contract. Manufacturer hereby waives all requirements of public or private sale, notice and other procedure, formalities and requirements for its benefit governing foreclosures or satisfaction of the line hereby created.

29. Manufacturer agrees not to assign, transfer, deliver, pledge, hypothecate or otherwise encumber the shares of stock transferred and delivered by Sealy to Manufacturer under this contract, to any person or entity other than Sealy. Any assignment, transfer, delivery pledge, encumbrance, or hypothecation in violation of this paragraph shall be null and void and Sealy may refuse to recognize any such assignment or transfer on its stock records.

[fol. 1161E] 30. In the event Manufacturer files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under Section 77B or other sections of the Bankruptcy Act and its amendments, suspends business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously all right, title and interest of Manufacturer to the shares transferred and delivered to it by Sealy shall revest and be retransferred and delivered to it by Sealy shall have all proper remedies, legal and equitable, to secure the return of the particular certificates representing the said shares.

31. Manufacturer hereby grants to Sealy an option to purchase from Manufacturer all of the shares of stock transferred and delivered to it by Sealy under this contract, said option to be exercisable by Sealy at any time during a period of thirty (30) days from and after the end of the term of this contract or from and after any prior termination, hereof as provided for herein, at the price of One ($1.00) Dollar per share. Manufacturer shall properly assign, transfer and deliver all of said stock to Sealy Upon Notice from the Latter of its Election to exercise said option and tender of a certified check payable to the order of Manufacturer for the consideration of One ($1.00) Dollar

per share. Sealy shall have the right to exercise said option during the aforesaid period following any termination of this contract independently and without regard to any indebtedness or liability from Sealy to Manufacturer which may exist at that time under this contract or otherwise. Sealy shall have all proper remedies, legal or equitable, for specifically recovering the particular certificates representing the shares transferred under this contract to Manufacturer.

[fol. 1162E] 32. Sealy shall place the following notice on each certificate for stock transferred under this contract.

"Shares represented hereby are transferred by Sealy, Inc., "transferor", to The Fred G. Hodges Bedding Co., 'Transferee' in accordance with the Manufacturer's Contract between the parties dated August 1, 1938, prohibiting transfer, assignment, delivery, pledge, hypothecation or encumbrance thereof by transferee, giving transferee a lien thereon for the payment of any indebtedness due transferor by transferee providing for simultaneous and automatic revesting and retransferring of title thereof to transferor upon filing of petition in bankruptcy in behalf of or against transferee or proceedings for reorganization of transferee under the Bankruptcy Act, or upon appointment of a receiver, an assignment for benefit of creditors, or suspension of business of transferee, and giving transferor an option to buy said shares for $1.00 each each exerciseable at any time within 30 days after any termination of said Manufacturer's Contract. Transferor and transferee have copies of said Manufacturer's Contract.

33. All notices provided for or to be given under this contract shall be in writing.

34. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer [fol. 1163E] its rights in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

35. This contract shall be deemed separable; and if any portion hereof shall be held invalid for any reason, the

remainder shall not thereby invalidated, but shall remain in full force and effect.

36. This contract shall become binding and effective from the date of its execution by the parties hereto, and shall remain in force and effect, unless sooner terminated under the terms of paragraphs 23 or 24 hereof, until May 31, 1940.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this contract to be executed, in duplicate, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, by H. E. Wolf, President.

Attest:

R. G. Culp, Assistant Secretary.

The Fred G. Hodges Bedding Co. (Seal) by Wm. F. Gring.

Witness:

Theo. C. Engelhardt.

[fol. 1164E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1016

Sealy Contract of Memphis, Tennessee, November 1, 1936

[fol. 1165E] MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 1st day of November, 1936, by Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", and U. S. Bedding Company, a Georgia corporation, having a regular place of business at Memphis, Shelby County, in the State of Tennessee, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding and similar products; and is engaged in national advertising, merchandising and general cooperative effort in the sale of Sealy products and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of Sealy's national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein,

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties as follows: -

[fol. 1166E] Definition of Sealy Products

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, sofa beds, pillows and cushions, manufactured, or to be manufactured and/or sold, bearing or having affixed thereto in any manner, the Sealy trade name, and/or trade-marks, and/or labels, or in any other fashion the word and/or name "Sealy".

Right to Manufacture and Sell

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract,

to manufacture Sealy Products to-wit: Mattresses, studio couches, bed springs, sofa beds, pillows and cushions, and will do so within the territory hereinafter defined, under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name, trade-marks, and copyrights. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured and/or sold by Manufacturer.

Use of Trade-Marks, Patents, Licenses

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trade-marks, exclusive rights and licenses but only during the life of and while fully complying with this contract. On any termination of this contract all rights given to Manufacturer hereunder shall cease, and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, [fol. 1167E] copyrights, trade-names, trade-marks or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy or which Sealy controls or has interest in, now or in the future, while this contract is in force, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

Specifications

5. A true and correct copy of the specifications of the Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications and/or promulgate specifications for additional Sealy Products. When new specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement is given to Manufacturer, such new or changed specifications shall become a part of this contract and after 30 days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

Methods and Processes

6. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, to- [fol. 1168E] gether with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfuly in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

7. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy, on demand, specimens of products manufactured under this contract and samples of the ma-

terials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

8. Manufacturer may advertise Sealy Products by means embodying and employing Sealy trade names, trade-marks, and copyrights. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

9. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade name by the manufacture or sale by Manufacturer, in accordance with the provisions [fol. 1169E] of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims on any of them.

10. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Territory

12. The exclusive territory hereby allotted to Manufacturer is as follows:

(1) The states of Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Florida, and Kentucky.

(2) All of Georgia, North Carolina, and South Carolina, provided however, that if an additional Manufacturer is secured by Sealy for the manufacture and sale of Sealy products within the state of Georgia, North Carolina, or South Carolina, on or before August 1, 1939, then the said states of North Carolina, and South Carolina, and all of the state of Georgia north of but not including the counties of Quitman, Randolph, Terrell, Lee, Worth, Turner, Ben Hill, Coffee, Bacon, Pierce, Brantley, and Glynn, shall revert to Sealy so that the same may be granted by Sealy to

such new manufacturer. If such a manufacturer willing to contract for said territory is not obtained on or before August 1, 1939, then all the aforesaid states of North Carolina, South Carolina, and Georgia, shall be and remain subject to this contract.

(3) All that portion of Missouri east of and including: Schuyler, Adair, Macon, Randolph, Boone, Cole, Miller, Pulaski, Texas, and Howell counties.

(4) All that portion of Illinois south of and including: Pike, Scott, Morgan, Sangamon, Christian, Shelby, Cumberland, and Clark counties.

(5) The following counties in Indiana: Knox, Daviess, Martin, Lawrence, Jackson, Jennings, Jefferson, Scott, Washington, Orange, Dubois, Pike, Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry, Crawford, Harrison, Floyd, Clark.

(6) All that portion of Iowa east of and including the following counties: Howard, Chickasaw, Bremer, Buchanan, Linn, Iowa, Keokuk, Wapello, and Davis.

[fol. 1170E] Sales in or Shipments into Manufacturer's Territory

13. Sealy will not manufacture nor sell, nor will it, without consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand as liquidated damages, $10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy, and $10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said $10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

14. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the pur-

chaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of $10.00 for each Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

15. Manufacturer shall not aid, abet or assist any other corporation, partnership, or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of, any of the Sealy labels, brands, or [fol. 1171E] materials, without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears a label, trade name or trademark which is nationally advertised, or nearly so, in competition with Sealy Products.

Inferior Products

16. Manufacturer will manufacture and sell Sealy Products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged if they are sold at cut retail prices. Manufacturer, therefore, agrees to contract, orally or in writing, with each retailer to whom

it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefor fixed by Sealy, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

Records and Reports of Manufacturer

18. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right [fol. 1172E] to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Sealy Labels

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefor by Sealy. Neither the Sealy name nor any Sealy trade-mark or trade name shall be affixed to a Sealy product or appear thereon other than by a copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label, copyrighted or otherwise, containing the name "Sealy" or any Sealy trademark or trade name to a product other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other way represent that a product not made strictly pursuant to and in accordance with this contract, is a Sealy product.

Sealy hereby licenses Manufacturer to have copies made of the labels copyrighted by Sealy and to obtain the same, but only in the manner and according to the procedure hereinafter provided for, and to use the same. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy, and none shall be placed on

or used in connection with any product not made strictly pursuant to and in accordance with this contract. This license shall be effective so long as this contract is in force and effect, and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

For Mattresses:

Sealyrest Tuftless, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Tuftless, Sunspun, Sleep Ensemble Mattress Unit, Sleep Charm, Airlite Mattress [fol. 1173E] Unit, Super Sleep Ensemble Mattress Unit.

For Upholstered Box Springs:

Sealyrest, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Sleep Charm, Sunspun, Tuftless, Airlite Foundation Unit, Sleep Ensemble Foundation Unit, Super Sleep Ensemble Foundation Unit.

Sealy may require other and additional labels to be placed on Sealy Products and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the name of the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels, shall send to Sealy, in duplicate, a regular duly executed order on the said designated label manufacturer or distributor for the amount and kind of labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 20 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy labels under this paragraph shall be for a quantity of not less than 25 labels of the particular class ordered, as the same are classified in paragraph 20 hereof, and if labels of more than one class [fol. 1174E] are ordered, the order shall be for a minimum of 25 labels of each class of labels ordered.

20. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 19.

Labels for mattresses or upholstered box springs priced by Sealy at wholesale:

Standard Mattresses and Box Springs:

Class I	at	$11.00 or less	.25 each
Class II	from	$11.01 to $13.00	.35 "
Class III	"	$13.01 to $15.50	.50 "
Class IV	"	$15.51 to $17.75	.75 "
Class V	"	$17.76 to $23.50	$1.00 "
Class VI	"	$23.51 to $28.75	$1.50 "
Class VII	"	$28.76 to $35.75	$2.00 "
Class VIII	"	$35.76 to $47.50	$3.00 "
Class IX	"	$47.51 and up	$5.00 "
Hotel Special Model A		$20.50	.50 "
Hotel Special Model B		$13.50	.35 "
Little Darling Crib Mattress, Style A			.10 "
Little Darling Crib Mattress, Style B			.10 "

Crestline Mattresses and Box Springs:

Class A	from	$ 7.51 to $ 8.50	.10 each
Class B	"	$ 8.51 to $ 9.50	.15 "
Class C	"	$ 9.51 to $10.50	.20 "
Class D	"	$10.51 to $11.00	.25 "
Class E	"	$11.01 to $13.00	.35 "
Class F	"	$13.01 to $15.50	.50 "
Class G	"	$15.51 to $17.75	.75 "
Class H	"	$17.76 to $23.50	$1.00 "
Class J	"	$23.51 to $28.75	$1.50 "
Class K	"	$28.76 to $35.75	$2.00 "
Class L	"	$35.76 to $47.50	$3.00 "
Class M	"	$47.51 and up	$5.00 "

Promotional Mattresses and Box Springs:

Class I	at	$11.00 or less	.25 each
Class II	from	$11.01 to $13.00	.35 "
Class III	"	$13.01 to $15.50	.50 "
Class IV	"	$15.51 to $17.75	.75 "
Class V	"	$17.76 to $23.50	$1.00 "
Class VI	"	$23.51 to $28.75	$1.50 "
Class VII	"	$28.76 to $35.75	$2.00 "
Class VIII	"	$35.76 to $47.50	$3.00 "
Class IX	"	$47.51 and up	$5.00 "

[fol. 1175E] Labels for Studio Couches priced by Sealy at wholesale:

Standard Studio Couches:

Class I	at $24.50 or less	.25	each
Class II	from $24.51 to $29.50	.50	"
Class III	" $29.51 to $39.50	.75	"
Class IV	" $39.51 to $49.50	$1.00	"
Class V	" $49.51 and up	$1.50	"

Crestline Studio Divans:

Class A	at $24.50 or less	.25	each
Class B	from $24.51 to $29.50	.50	"
Class C	" $29.51 to $39.50	.75	"
Class D	" $39.51 to $49.50	$1.00	"
Class E	" $49.51 and up	$1.50	"

Promotional Studio Divans:

Class I	at $24.50 or less	.25	each
Class II	from $24.51 to $29.50	.50	"
Class III	" $29.51 to $39.50	.75	"
Class IV	" $39.51 to $49.50	$1.00	"
Class V	" $49.51 and up	$1.50	"

For labels on any products not herein specified, Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

Minimum Consideration

21. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of $100.00 per month for the first six months immediately following the effective date of this contract; $125.00 per month for the next six months; $150.00 per month for the next six months; $200.00 per month for the next six months; and $250.00 for each month thereafter.

(b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 20 hereof, and if the amount so paid for labels exceeds the minimum considera-
[fol. 1176E] tion, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 20 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 20, and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness then owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Option in Sealy to Buy Labels

22. On any termination of this agreement, Sealy shall have an option for a period of thirty days from such termi- [fol. 1177E] nation to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which Manufacturer has on hand at that time and not already placed on Sealy Products, at such prices as Manufacturer actually paid the label manufacturer for the same.

Automatic Termination of Contract

23. In the event Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under Section 77B of the Bankruptcy Act, suspends business, winds up its business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously this contract shall terminate.

Arbitration and Termination

24. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, whether of law or of fact, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed, and decided by them rather than by action in the Courts. The party desiring an arbitration at any time shall give notice to the other party stating the name of the arbitrator selected by it and his address, and stating concisely all matters to be arbitrated and its contentions in connection therewith. The other party shall then within fifteen (15) days from the receipt of said notice inform the first party of the name of its arbitrator and his address, and furnish to the first party an answer stating its contentions in the matter. The two arbitrators so appointed shall choose a third arbitrator, and the three so selected shall constitute the arbitration board. If the three arbitrators are unable to agree on the time and place of their meeting together, the third arbi- [fol. 1178E] trator's decision in the matter shall be final. In any event, the Board must begin its deliberations within fifteen (15) days from the time the third arbitrator is chosen. The parties shall serve on the Board copies of the statements of their contentions within ten (10) days after the Board has been selected. The Board may make its own investigation and hear both sides orally or in writing. The Board's decision by a majority vote on law or fact shall be final, binding and conclusive on the parties without any right of appeal. The Board shall render its decision at least within thirty (30) days from the date the

third arbitrator is chosen. Failure by either of the parties or their arbitrators to take any of the steps required by this paragraph shall automatically operate as an adjudication against it.

If the Board's decision is that one of the parties has breached this contract, then such party shall have thirty (30) days after notice of such decision within which to substantially make up or remedy its default. The Board may award reasonable damages to the injured party. If it does, payment of the damages shall also constitute remedying the default. If the defaulting party fails to pay the damages awarded or otherwise remedy the default in accordance with this paragraph within said thirty (30) days, the injured party shall have the right to immediately terminate this contract by notice to the defaulting party.

Also, Manufacturer may terminate this contract after six months' notice of intention so to terminate. This notice of intention, once given, shall not be revokable, and automatically, at the end of that time, this contract shall be terminated.

Unless this contract is terminated under the provisions of paragraph 23 or of this paragraph, it shall remain in [fol. 1179E] full force and effect until terminated by mutual agreement of the parties hereto.

25. On each certificate for Sealy stock issued to or held by Manufacturer, there shall be placed a notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, Sealy shall have an option to purchase all of the Sealy stock which Manufacturer owns. The option shall be exercisable only between the 20th and 30th days following the day on which the contract terminates. The option to buy shall be at $100.00 per share cash unless Manufacturer already has a bona fide existing offer for the stock at more than $100.00 cash per share. In such case Manufacturer shall exhibit satisfactory and complete evidence of such offer to Sealy, in which case Sealy shall have an option at such higher price, to be exercised as aforesaid.

Manufacturer agrees not to sell or agree to sell any of its Sealy stock without first notifying and furnishing to Sealy complete evidence of the offer or offers which it has

and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty days from the time of such notification to purchase Manufacturer's Sealy stock on the same terms as those contained in the offer which Manufacturer has received. Any sale or transfer contrary to the terms of this paragraph shall be null and void. If Manufacturer does not sell its stock within thirty days after the expiration of the said option period, then Manufacturer's stock shall become again subject to the terms of this contract. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its Sealy stock.

[fol. 1180E] Assignment of Rights Under This Contract

26. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer its rights, in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

Termination No Release from Obligation Already Accrued

27. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

28. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

29. All notices provided for or to be given under this contract shall be in writing.

30. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

31. This contract is executed in duplicate.

Effective Date

32. This contract shall be binding and effective from the [fol. 1181E] date above written.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby.

Sealy, Incorporated, by H. E. Wolf, President.

Attest:

R. G. Culp, Asst. Secretary.

U. S. Bedding Company, by Jacob R. Haas, Pres.

Attest:

J. O. Millard.

2/9/38

[fol. 1182E] "Exhibit A"

Sealy Specifications

Sealy Fastasleep

Cover	—6 Oz. blue and white stripe or equal.
Burlap	—7 or 8 Oz.
Border	—Optional
Filling	—35 lbs. felt (Good Millrun Linters)
Vents	—4
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Outside Roll or French Edge, as desired Cloth Handles
Unit	—Sealy "Durolife" #3617
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Fastasleep Printed Label Sealy Fastasleep Supp. Label

Wholesale Price	$11.00
Resale Price	19.95
Royalty	.25
P.M.	Optional

Sealy Truease

Cover	—Damask as specified or ACA Preferred Cover—Truease Panel (Golding Brothers—32½¢—56")
Burlap	—7 or 8 Oz.
Border	—Prebuilt with embroidered eyelets. Preferred border #4217 (CMQ—14¼¢)
Filling	—38 lbs. Felt (Millrun Linters).
Finish	—Tape Edge
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Inside Roll Handles
Unit	—Sealy "Durolife" #3617
Packing	—Paper Bag or non-test carton for truck shipment. 200 test carton for I.C.C.

Marks —Sealy Truease Printed Label
Sealy Truease Supp. Label
Wholesale Price..... $12.75
Resale Price..... 24.75
Royalty..... .35
P.M..... .50

Sealy Truease Style B (Tuftless)

Cover —Damask as specified or ACA Preferred Cover—Truease Panel (Golding Brothers—32½¢—56")
Burlap —7 or 8 Oz.
Border —Prebuilt with embroidered eyelets Preferred border # 4217 (CMQ—14¼¢)
Filling —Option of 38# compressed (Mill-run) Linter felt or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.
Finish —Tape Edge
Tailoring —Inside Roll, Cloth Handles
Unit —Sealy "Durolife" # 3617
Packing —Paper bag or non-test carton for truck shipment. 200 test carton for I.C.C.
Marks —Sealy Truease Printed Label
Sealy Truease Style B Supp. Label
Wholesale Price..... $12.75
Resale Price..... 24.75
Royalty..... .35
P.M..... .50

[fol. 1183E] Sealy Natural Rest

Cover —Damask as specified or ACA Preferred Cover—Natural Rest Panel (Golding Brothers—40¢—56"
Border —Prebuilt, with embroidered eyelets. Preferred Border—# 4218 (CMQ—14¼¢)
Filling —38 Lbs. Felt (Millrun Linters)
Finish —Mercerized Tape Edge Made on Tape Edge Machine
Buttons —78 4 x 6 Diamond Tuft

Tailoring —Inside Roll Handles
Unit —Sealy "Durolife" #3618
Packing —Paper bag or non-test carton for truck shipment. 200 test carton for I.C.C.
Marks —Sealy Natural Rest Woven Label
Sealy Natural Rest Supp. Label

Wholesale Price	$15.50
Resale Price	29.50
Royalty	.50
P.M.	.75

Sealy Natural Rest Style B (Tuftless)

Cover —Damask as specified or ACA Preferred Cover—Natural Rest Panel (Golding Brothers—40¢—56")
Burlap —7 or 8 Oz.
Border —Prebuilt, with embroidered eyelets. Preferred Border—#4218 (CMQ—14¼¢)
Filling —Option of 38# compressed (Millrun) Linter felt or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.
Finish —Mercerized Tape Edge Made on Tape Edge Machine
Tailoring —Inside Roll Handles
Unit —Sealy "Durolife" #3618
Packing —Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks —Sealy Natural Rest Woven Label
Sealy Natural Rest Style B Supplementary Label

Wholesale Price	$15.50
Resale Price	29.50
Royalty	.50
P.M.	.75

Sealy Air Vent

Cover —Damask, as specified, or ACA Preferred Cover—Air Vent Panel (Golding Brothers) 47½¢—56"

Burlap	—7 or 8 Oz.
Border	—Prebuilt with embroidered eyelets Preferred Border #4219 (CMQ—14¼¢)
Filling	—38 Lbs. Fancy 1st Cut Linters
Finish	—Mercerized Tape Edge
Buttons	—78 4 x 6 Diamond
Tailoring	—Inside Roll Handles
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Supp. Label

Wholesale Price	$17.75
Resale Price	34.50
Royalty	.75
P.M.	1.00

[fol. 1184E] Sealy Air Vent Style B (Tuftless)

Cover	—Damask, as specified, or ACA Preferred Cover—Air Vent Panel (Golding Brothers) 47½¢—56"
Burlap	—7 or 8 Oz.
Border	—Prebuilt with embroidered eyelets. Preferred Border #4219 (CMQ—14¼¢)
Filling	—Option of 38 lbs. Felt (Fancy 1st Cut Linters) or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.
Finish	—Mercerized Tape Edge
Tailoring	—Inside Roll Handles
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Style B Supp. Label

Wholesale Price	$17.75
Resale Price	34.50
Royalty	.75
P.M.	1.00

Sealy Enchanted Nights

Cover	—Damask, as specified, or ACA Preferred Cover—Enchanted Nights Panel (Golding Bros.) 57½¢—56″
Border	—Prebuilt with embroidered eyelets Preferred Border—#4221 (CMQ)—21¢
Filling	—Burlap Spring Cover 7 or 8 Oz. 38 Lbs. Fancy 1st Cut Linters
Unit	—Sealy "Durolife" #3618
Tailoring	—Inside Roll Edge, Handles
Finish	—Mercerized Tape Edge
Buttons	—78 metal, 4 x 6 Diamond Tuft
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Supp. Label

Wholesale Price	$21.00
Resale Price	39.50
Royalty	1.00
[illegible]M	1.00

Sealy Enchanted Nights Style B (Tuftless)

Cover	—6½ Oz. 32″ basis, 56″ width Preferred Cover—Covington, Waveland, or Kingsbury (Blumenthal Print Works) 26¢ Yd.
Burlap	—8 Oz.
Border	—4 Row Stitched, prebuilt with Felt and Muslin Inside or vertical stiched border
Filling	—Two 51 x 73 Nukraft Pads, made by the B.F. Goodrich Co. 20 Lbs. Felt (Fancy 1st Cut Linters)
Finish	—Mercerized Tape Edge, mattress completed on Tape Edge Machine
Unit	—Sealy "Durolife" #3618
Tailoring	—Inside Roll, Cloth Handles
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks —Sealy Enchanted Nights Woven Label
Sealy Enchanted Nights Style B
Supplementary Label

Wholesale Price	$21.00
Resale Price	39.50
Royalty	1.00
P.M.	1.00

[fol. 1185E] Sealy Tuftless (Air-woven)

Cover —Damask, ACA, or H Tick
Recommended Cover—Whitaker H Tick, 20¢—32″

Border —Plain

Tailoring —Outside Roll Edge, Tape Edge, Handles

Filling —50 Lbs. Strict Middling Harsh 7/8″ Staple Cotton or Better, ginned or garnetted

Finish —Mercerized Tape Edge
No Tufts

Packing —Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks —Sealy Tuftless Woven Label
Sealy Tuftless Supp. Label

Wholesale Price	$21.00
Resale Price	42.50
Royalty	1.00
P.M.	1.00

Sealy Rest

Cover —Damask, as specified, or ACA
Preferred Cover—Sealy Rest Panel (Golding Brothers) 57½¢—56″

Burlap —8 Oz.

Border —Prebuilt with embroidered eyelets.
Preferred Border—#4223 (CMQ) 14¾¢

Filling —Two 51 x 73 Nukraft Pads, made by the B. F. Goodrich Co.
20 Lbs. Felt (Fancy 1st Cut Linters)

Finish —Mercerized Tape Edge

Unit —Sealy "Durolife" #3618

Tailoring —Inside Roll Handles
Packing —Paper bag or nontest carton for truck shipment, 200 test carton for I.C.C.
Marks —Sealy Rest Tuftless Woven Label
Sealy Rest Tuftless Supplementary Label

Wholesale Price	$23.05
Resale Price	44.50
Royalty	1.00
P.M.	1.50

Super Sealy Rest

Cover —Damask, as specified, or ACA (8 Oz. Herringbone) Preferred Cover—Super Rest Panel (Golding Brothers) 65¢—56″
Burlap 8 Oz.
Border —Prebuilt with embroidered eyelets Preferred Border—#4216 (CMQ) 22½¢
Filling —Two 51 x 73 Nukraft Pads made by the B. F. Goodrich Co. 20 Lbs. Fancy 1st Cut Linters
Finish —Mercerized Tape Edge
Tailoring —Inside Roll Handles
Unit —Sealy "Durolife" #3616
Packing —Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks —Super Sealy Rest Woven Label
Super Sealy Rest Supplementary Label

Wholesale Price	$28.75
Resale Price	54.50
Royalty	1.50
P.M.	1.75

[fol. 1186E] Sealy Sleep Ensemble Base

Cover —Damask, as specified, or ACA Preferred Cover—Sleep Ensemble All Over Design (Golding Brothers)—52½¢—56″
Border —5 Row Cord Edge

Base	—Helical Tied Unit nailed to wood frame and snubbed
Coils	—90 # 11 Standard Wire Single Cone
Slats	—10 1 x # 11 Steel
Border Wire	—# 0
Helicals	—72 Pr. # 16 Standard Wire Interlocked.
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap placed over coils
Unit	—180 Coils # 13 Standard Innerspring Unit, sewed on top of coils.
Filling	—1 Sisal Pad All over 56" x 78" 7 lbs. Fancy 1st Cut Linters
Top Border	—# 4 attached to unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Four
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting
Marks	—Sealy Sleep Ensemble Woven Foundation Label

Sealy Sleep Ensemble Mattress

Cover	—Damask, as specified, or ACA Preferred Cover—Sleep Ensemble All Over Design (Golding Bros) 52½¢—56"
Boxing	—2½"
Filling	—One 51 x 73 Nukraft Pad 28 Lbs. Fancy 1st Cut Linters
Tailoring	—2 Row Cord Edge Tuftless Finish
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Sleep Ensemble Woven Mattress Label Sealy Sleep Ensemble Supplementary Label

Wholesale Price	$35.75
Resale Price	69.50
Royalty	2.00
P.M.	2.50

Construction Note: Pad must be filled in Muslin bag and closely interlaced before filling in outside ticking. Cover muslin bag with enough felt to eliminate impressions from lacing.

Sealy Sunspun

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn), 72½¢ to 82½¢
Border	—4 Row Flexo Cord
Burlap	—8 Oz.
Filling	—2 Nukraft Pads 51 x 73 20 Lbs. No. 1 Staple Cotton Felt
Tailoring	—4 Metal Handles—Jiffy, Velv-O-Grip Handles, or equal Inside Roll Edge
Finish	—Cord Edge No Tufts
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Sunspun Woven Label Sealy Sunspun Supplementary Label

Wholesale Price	$35.75
Resale Price	69.50
Royalty	2.00
P.M.	2.25

[fol. 1187E] Construction Details

—Made with #3618 Unit. Burlap over unit, Nukraft on both sides of unit. 10 lbs. staple cotton felt on each side. Made with inside roll, cord edge. Made tuftless.

Sealy Airlite Ensemble Base

Cover	—Satin, as specified, or equal Preferred Cover—#959 (Arthur Kahn) 57½¢—39/40"
Border	—5 Row Flexo Cord
Coils	—90 Coil, #11 Standard or Premier Wire Coils, 10 x 9
Slats	—Ten 1 x #11 Steel
Border Wire	—#0

Helicals	—72 Pair, # 16 standard or premier wire interlocked.
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap
Unit	—180 Coils, # 13 Standard or premier Innerspring Unit sewed on top of coils
Filling	—1 Nukraft Pad 51" x 73" 5 Lbs. No. 1 Staple Cotton Felt
Top Border	—# 4 attached to Unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Eight
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting
Marks	—Sealy Airlite Ensemble Woven Foundation Label

Sealy Airlite Ensemble Mattress

Cover	—Satin, as specified, or equal Preferred Cover—# 959 (Arthur Kahn) 57½¢—39/40"
Boxing	—2½"
Filling	—15 lbs. Staple Cotton Felt 1 Nukraft Pad 51" x 73"
Tailoring	—2 Row Flexo Cord Edge Tuftless
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Airlite Ensemble Woven Mattress Label Sealy Airlite Ensemble Supplementary Label

Wholesale Price	$47.50
Resale Price	95.00
Royalty	3.00
P.M.	3.50

Sealy Airlite Ensemble Construction Details

Mattress —Must be filled in Muslin bag and closely interlaced before filling in outside ticking. Cover muslin bag with enough felt to eliminate impressions from lacing. Made with 1 Nukraft pad in the center, 7½ lbs. of staple cotton felt on each side. Tuftless

[fol. 1188E]

Base —Made the same as our regular Sleep Ensemble base. Helical tied 90 coil spring on wood frame. 180 coil unit on top Burlap in between. Burlap over top unit. 1 Nukraft pad, 5 pounds of staple cotton felt.

Sealy Super Sleep Ensemble Base

Cover —Sunshine Satin or equal Preferred Cover—Sunshine satin (Arthur Kahn) dependent on color 72½¢ to 82½¢

Border —5 Row Flexo Cord

Filling —1 Nukraft Pad, 41" x 73" 4 lbs. staple cotton felt 7 or 8 oz. burlap placed over box spring coils

Construction —Ninety # 10 Gauge Wire Standard or Premier 10 rows long, 9 coils each, hand tied with twine 8 Ways

Border Wire —# 4 Gauge Steel attached by metal clips

Unit —12 Rows Wide, 22 Rows Deep, 264 Coils

264 Coils —200 Center Coils—15 Gauge Standard or Premier Wire 64 Outside Edge Coils—14 Gauge Standard or Premier Wire.

264 Coil Innerspring Unit attached to top of box spring base with metal clips
Burlap 7 or 8 Oz. placed on top of innerspring unit.

Top Border Wire —#4 attached to top of unit with 34 clips.
Handles —Taped Cloth
Bottom Tick —550 Sheeting
Frame —Wood reinforced End or Sides with 8 cross slats. Finished size 52½ x 74 4½" radius all corners.
Marks —Sealy Super Sleep Ensemble Woven Foundation Label

Sealy Super Sleep Ensemble Mattress

Cover —Sunshine Satin or Equal
Preferred Cover—Sunshine Satin (Arthur Kahn) 72½ to 82½¢.
Boxing —3"
Trim —Bead Edge with 3 Row Flexo Cord.
Two colored braid cord
Filling —15 Lbs. No. 1 Staple Cotton Felt.
1 Nukraft Pad 51" x 73"
2 All Horse Mane Hair Pads—55¢ lb. grade
2 Lambs Wool Bats 4 lbs.
Finish —No Tufts
Packing —Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks —Sealy Super Sleep Ensemble Woven Mattress Label
Sealy Super Sleep Ensemble Supplementary Label.

Wholesale Price	$ 75.00
Resale Price	150.00
Royalty	5.00
P.M.	5.00

[fol. 1189E] Sealy Super Sleep Ensemble Construction Details

Mattress	—Nukraft pad in center, hair pad on each side of Nukraft, sewed to the Nukraft by means of twine (similar to tufting). 7½ pounds of staple cotton felt on each side of hair pads. Filled into a muslin bag and closely interlaced. Place lambs-wool pad on each side and fill into outside cover.
Base	—Burlap on top of box spring, next to innerspring unit, #4 border wire around the top unit, burlap on top of the second unit. Cushioned with a Nukraft pad, 4½ pounds staple cotton felt.

Sealy Hotel Special Model "A"

Cover	—8 Oz. ACA Ticking
Burlap	—7 or 8 Oz.
Filling	—2 Nukraft Pads 51" x 73" 20 Lbs. 1st cut linter felt
Finish	—Innerroll, Tape Edge No Tufts
Tailoring	—Mercerized Tape—Border corded with 4 rows Flexo Cord. Jiffy, Velv-O-Grip Handles, or Equal.
Vents	—Eight
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks	—Sealy Hotel Special Model "A" Printed Label	
	Wholesale Price	$20.50
	Royalty	.50
	P.M.	None

Little Darling Crib Mattress Style "A"

Cover	—3 yards Sateen
Boxing	—Vertical Stitch Boxing including 1# compressed felt.
Filling	—Spring Unit 26" x 50" x 4" high 100" #2 Screen Wire 6# 1st Cut Linter Felt Table prepared, Tape Machine Finish
Tailoring	—Ventilators—Cloth Binding Tuftless
Packing	—Wrapper in Paper
Marks	—Sealy Little Darling Printed Label

Wholesale Price	$ 4.00
Resale Price	9.75
Royalty	.10
P.M.	Optional

Note—Cartons: Carriers will accept non-test cartons provided they are specified as such, namely, "Non-Test", in which case a 20% surcharge over the regular freight rate is applied under I.C.C. rulings. Non-Test Cartons, not specified as such, upon delivery to carriers are subject to a 300% surcharge upon detection by freight inspectors.

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[fol. 1190E] Sealy Box Spring Specifications

Sealy Fastasleep

Cover	—6 Oz. blue and white stripe or equal
Border	—Optional
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. of Felt (Millrun Linters)

Frame	—Skeleton Wood, no Slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Tape edge to match mattress
Packing	—Paper Bag or non-test carton for truck sihpment, 200 test carton for I.C.C.
Marks	—Sealy Fastasleep Printed Label Sealy Fastasleep Supp. Label

Wholesale Price	$11.00
Resale Price	19.95
Royalty	.25
P.M.	Optional

Sealy Truease

Cover	—Damask, as specified, or ACA Preferred Cover—Truease Panel (Golding Brothers—32½¢–56″)
Border	—Prebuilt with embroidered eyelets. Preferred border # 4217 (CMQ–14¼¢)
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame or 63 Coil hand tied.
Tailoring	—Tape edge to match matrress
Packing	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Truease Printed Label Sealy Truease Supp. Label

Wholesale Price	$12.75
Resale Price	24.75
Royalty	.35
P.M.	.50

Sealy Natural Rest

Cover	—Damask as specific or ACA Preferred Cover—Natural Rest Panel (Golding Brothers—40¢–56″)
Border	—Prebuilt, with embroidered eyelets. Preferred Border—#4218 (CMQ–14¼¢)
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 lbs. Felt (Millrun Linters)

[fol. 1191E]

Sealy Natural Rest

Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame or 72 Coil hand tied.
Tailoring	—Mercerized Tape Edge
Packing	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Natural Rest Woven Label Sealy Natural Rest Supp. Label

Wholesale Price	$15.50
Resale Price	29.50
Royalty	.50
P.M.	.75

Sealy Air Vent

Cover	—Damask, as specified, or ACA Preferred Cover—Air Vent Panel (Golding Brothers) 47½¢–56″
Border	—Prebuilt with embroidered eyelets Preferred Border #4219 (CMQ–14¼¢)
Bottom Tick	—550 Sheeting

Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 slats, 9 coils per slat, approximate weight of coils 19½ lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton for shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Supp. Label

Wholesale Price	$17.75
Resale Price	34.50
Royalty	.75
P.M.	1.00

Sealy Enchanted Nights

Cover	—Damask as specified or ACA Preferred Cover—Enchanted Nights Panel (Golding Bros.) 57½¢–56"
Border	—Prebuilt with embroidered eyelets. Preferred Border—#4221 (CMQ)–21¢
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 10 Coils per Slat, approximate weight of coils 21–6/10 lbs. #10 Standard or Premier Wire Coils.

[fol. 1192E]

Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied

Border Wire	—#4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton for shipment, 200 test carton for I.C.C.
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Supp. Label

Wholesale Price	$21.00
Resale Price	39.50
Royalty	1.00
P.M.	1.00

Sealy Enchanted Nights Style "B" Box Spring

—Same specifications as for regular Enchanted Nights except covered and styled to match Enchanted Nights Style "D" Mattress.

Sealy Tuftless

Cover	—Damask, ACA, or H Tick Preferred Cover—Whitaker H Tick, 20¢—32"
Border	—Plain
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of Coils, 21–6/10 lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton for shipment, 200 test carton for I.C.C.

Marks —Sealy Tuftless Woven Label
Sealy Tuftless Supp. Label

Wholesale Price	$21.00
Resale Price	42.50
Royalty	1.00
P.M.	1.00

Sealy Rest

Cover —Damask, as specified, or ACA Preferred Cover—Sealy Rest Panel (Golding Brothers)—57½–56″

Border —Prebuilt with embroidered eyelets Preferred Border—#4223 (CMQ) 14¾¢

Bottom Tick —550 Sheeting

Burlap —7 or 8 Oz.

[fol. 1193E]

Filling —5 Lbs. Fancy 1st Cut Cotton Linters
One 51″ x 73″ Nukraft Pad

Frame —Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs.
#10 Standard or Premier Wire Coils

Tailoring —Mercerized Tape Edge

Twine —Italian Hemp, 8 Way, Hand Tied

Border Wire —#4 Acme, attached to edge coils with clips.

Packing —Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks —Sealy Rest Tuftless Woven Label
Sealy Rest Tuftless Supplementary Label

Wholesale Price	$23.50
Resale Price	44.50
Royalty	1.00
P.M.	1.50

Super Sealy Rest

Cover	—Damask, as specified, or ACA (8 Oz. Herringbone) Preferred Cover—Super Rest Panel (Golding Brothers) 65¢–56″
Border	—Prebuilt with embroidered eyelets Preferred Border—#4215 (CMQ)–22½¢
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 lbs. #3 Fancy 1st Cut Lint One 51″ x 73″ Nukraft Pad
Frame	—Wood, 9 Slats, 10 Coils per Slat. Approximate weight of coils 21–6/10 lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Super Sealy Rest Woven Label Super Sealy Rest Supp. Label

Selling Price	$28.75
Resale Price	54.50
Royalty	1.50
P.M.	1.75

[fol. 1194E]

Sealy Sunspun

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn) 72½¢ to 82½¢
Border	—4 Row Flexo Cord
Bottom Tick	—Drill
Burlap	—7 or 8 Oz.
Filling	—One Nukraft Pad 51″ x 73″ 7 lbs. Staple cotton felt

Frame	—Wood, 9 Slats, 9 Coils per Slat. Approximate weight of coils 19½ lbs., # 10 Standard or Premier Wire Coils
Finish	—Cord Edge
Twine	—Italian Hemp
Border Wire	—# 4 Acme, attached to coils by means of Clips
Packing	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Sunspun Woven Label Sealy Sunspun Supp. Label.

Wholesale Price	$32.50
Resale Price	59.50
Royalty	2.00
P.M.	2.25

2/9/38

[fol. 1195E] Sealy Studio Divan and Sofa Bed Specifications

S–0 Efficiency

Base	—Square Corner, Back Pull, 40 Coil, Sisal Pad, and Felt or 100% Felt, Plain No Tufts.
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, Buttoned
Pillows	—50% Linters 50% Kapok
Trim	—Small Insert Cord about 75¢ per gross yards
Cover	—18¢ to 20¢—36" width
Arms	—None
Back	—None
Package	—200 Test Carton or Paper Bags

Wholesale Price	$18.75
Royalty	.25
Suggested Resale	None
P.M.	Optional

S–00 Mayfair

Base	—Square Corner, Back Pull, 40 Coil, Sisal Pad, and Felt or 100% Felt, Plain No Tufts.
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, Buttoned
Pillows	—Spring Filled, Felt Upholstered or Kapok.
Trim	—Small Insert Cord about 75¢ per gross yards.
Cover	—18¢ to 20¢—36″ width
Arms	—Round Tubular, Wood Arm Rests.
Back	—Round Tubular or Angle Iron, Uncovered.
Package	—200 Test Carton or Paper Bags

Wholesale Price	$22.75
Royalty	.25
Suggested Resale	None
P.M.	Optional

SN–1 Utility

Base	—Square Corner, Back Pull, 40 Coil, Burlap, #80 Nukraft and Felt, Plain No Tufts.
Pad	—Innerspring Sisal Pads and Felt or 100% Felt, 3 Cushion Effect (Double Auto Welts, Laced Down between Welts with 3 to 4 Buttons)
Pillows	—Spring Filled, Felt upholstered or Kapok
Trim	—Small Insert Cord, Tape or Equal
Cover	—18¢ to 20¢—36″ Width
Arms	—None
Back	—None
Package	—200 Test Carton or Paper Bag

Wholesale Price	$22.50
Royalty	.25
Suggested Resale	None
P.M.	Optional

[fol. 1196E]

SN–2 Cavalier

Base	—Square Corner, Front Pull, 40 Coil, Burlap, #80 Nukraft and Felt, Plain No Tufts
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect (Double Auto Welts, Laced Down Between Welts with 3 to 4 buttons)
Pillows	—Spring Filled, Felt Upholstered, or Kapok
Trim	—Small Insert Cord, Tape, or Equal
Cover	—18¢ to 20¢—36″ Width
Arms	—None
Back	—None
Package	—200 Test Carton or Paper Bag

Wholesale Price	$23.75
Suggested Resale	44.50
Royalty	.25
P.M.	Optional

SN–3 Drop Back

Base	—Round Corner, 44 Coil, Drop Back Construction #400, Burlap, #80 Nukraft and Felt, Plain No Tufts
Pad	—Innerspring, Sisal Pads and Felt, or 100% Felt, 3 Cushion Effect (Double Auto Welts, Laced Down Between Welts With 3 to 4 buttons)
Pillows	—Spring Filled, Felt Upholstered or Kapok
Trim	—Small Insert Cord, Tape or Equal
Cover	—18¢ to 20¢—36″ Width
Arms	—Square Tubular With Wood Arm Rest
Back	—Drop Back
Package	—200 Test Carton or Paper Bag

Wholesale Price	$26.75
Suggested Resale	49.50
Royalty	.50
P.M.	Optional

SN–4 Mainliner

Base	—Bed Hi, Front Pull, Square Corners, Sisal Pads and Felt or 100% Felt (No Nukraft) Plain, No Tufts
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt (No Nukraft), 3 Cushion Effect, Double Auto Welts and Laced Down between welts with 3 or 4 buttons.
Pillows	—Spring Filled, Felt Upholstered, or Kapok,
Trim	—Small Insert Cord, Tape or Equal
Cover	—Choice of 18¢ to 20¢—36″ Width
Arms	—None
Back	—None
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... $33.50
	Suggested Resale..... 64.50
	Royalty..... .75
	P.M..... Optional

[fol. 1197E]

SN–5 Empire

Base	—Square Corner, Front Pull, 44 Coils, Burlap, # 80 Nukraft, Felt, Plain, No Tufts.
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt (No Nukraft), 3 Cushion Effect, Double Auto Welts and Laced Down between Welts with 3 or 4 Buttons
Pillows	—Spring Filled, Felt Upholstered, or Kapok.
Trim	—Small Insert Cord, Tape or Equal.
Cover	—37¢ to 40¢—54″ Width Preferred Cover—# 540 (Pattern 88) (Southern Fabrics) 37½¢—54″
Arms	—# 2000 Wood Arm—(Memphis)
Back	—Tubular, stationary, Walnut, Uncovered
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... $30.75
	Suggested Resale..... 59.50
	Royalty..... .75
	P.M..... Optional

SN–6 Colonial

Base —Square corner, Front pull, Innerspring Unit, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.

Pad —Innerspring, 1 Side Sisal Pad and Felt or 100% Felt With Burlap, the other side burlap, # 80 Nukraft and Felt, 3 Cushion Effect, Double Auto Welt and Laced down between welts with 3 or 4 buttons

Pillows —2 Sunburst and 1 Oblong, Kapok filled Oblong Cushion placed in center.

Trim —Small Insert Cord, Tape or Equal

Cover —37¢ to 40¢—54″ Width
Preferred Cover—906—K (Golding)
25¢—36″

Arms —Combination # 642 (Pittsburgh)

Back —Combination # 642 (Pittsburgh)

Packing —200 Test Carton or Paper Bag

Wholesale Price	$42.75
Suggested Resale	79.50
Royalty	1.00
P.M.	Optional

[fol. 1198E]

SN–60 Oxford

Base —Square Corner, Front Pull, Innerspring Unit, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.

Pad —Innerspring 1 Side Sisal Pad and felt or 100% Felt with burlap the other side burlap, # 80 Nukraft and felt, 3 Cushion effect, double auto welt, and laced down between welts with 3 or 4 buttons.

Pillows —2 Sunburst and 1 Oblong, Kapok filled, Oblong cushion placed in center

Trim —Small Insert Cord, Tape or Equal

Cover —37¢ to 40¢—54″ Width
Preferred Cover—906—K (Golding)
25¢—36″

Packing —200 Test Carton or Paper Bag

Wholesale Price	$30.75
Suggested Resale	59.50
Royalty	.75
P.M.	Optional

SN–7 Cogswell

Base —Square Corner, Front Pad, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.

Pad —Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Double Auto Welts, Laced down Between Welts with 5 or more buttons

Pillows —Spring Filled, felt upholstered, or Kapok

Trim —Self-welt, or Equal

Cover —# 1700 @ .75¢ (Southern Fabrics)—54"

Arms —Cogswell (Cleveland # 5036)

Back —Cogswell (Cleveland # 5036)

Logs —Cogswell (Cleveland # 5036) or Equal

Molding —Cogswell (Cleveland # 5036) or equal

Packing —200 Test Carton or Paper Bag

Wholesale Price	$42.75
Suggested Resale	79.50
Royalty	1.00
P.M.	Optional

SN–8 Chippendale

Base —Square Corner, Front Pad, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain No Tufts.

Pad —Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Double Auto Welts, Laced Down between welts with 5 or more buttons.

Pillows —Spring-filled, felt upholstered, or Kapok

Trim —Self-welt, or Equal

Cover —Southern Fabrics # 919 or # 957 at 80¢—54"

Arms	—Chippendale (Cleveland #5035)
Back	—Chippendale (Cleveland #5035)
Legs	—Chippendale (Cleveland #5035) Or Equal
Molding	—Chippendale (Cleveland #5035) Or Equal
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... $43.75
	Suggested Reslae..... 84.50
	Royalty..... 1.00
	P.M..... Optional

[fol. 1199E]

SN–9 Cabriole

Base	—Square Corners, Front Pull, Bed Hi, Tight Seat #547 Seng or Equal, Burlap, #80 Nukraft and Felt, Plain No Tufts, No Cord or Seam Across Front Edge
Pad	—None
Pillows	—Spring Filled, Felt Upholstered or Kapok
Highrise	—Burlap, #80 Nukraft and Felt ACA covered
Mattress	—Plain No Tufts
Trim	—Self Welt or Equal
Cover	—"Carmen" (Golding Bros.) 75¢—54"
Arms	—Cabriole (Cleveland #5047)
Back	—Arms trimmed with hammered English Nails
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... $54.50
	Suggested Resale..... 104.50
	Royalty..... 1.50
	P.M..... Optional

SN–90 Renaissance

Base	—Square Corners, Front Pull, 40 Coil, Burlap, #80 Nukraft and Felt, Plain No Tufts
Pad	Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Laced Down Between Double Auto Welts With 5 or more buttons

Pillows —Spring Filled, Felt Upholstered or Kapok.
Trim —Self Welt or Equal
Cover —"Carmen" (Golding Bros), 75¢—54"
Arms) —Cabriole (Cleveland #5047)
Back) —Arms trimmed with English Hammered Nails
Packing —200 Test Carton or Paper Bags

Wholesale Price	$47.75
Suggested Resale	94.50
Royalty	1.00
P.M.	Optional

SN-10 Imperial

Base —Square Corner, Front Pull, 44 Coils, Burlap, #80 Nukraft, Felt, Plain, No Tufts
Seat Cushions —3 Spring Filled, felt upholstered.
Back Pillows —None—Upholstered back
Trim —Self Welt or Equal
Cover —80¢ to 85¢—54" Width
Preferred Cover—Langday (U.S. Pile Fabric) 75¢—54"
Arms —Upholstered (Pittsburgh)
Back —Upholstered (Pittsburgh)
Packing —200 Test Carton or Paper Bags

Wholesale Price	$52.75
Suggested Resale	99.50
Royalty	1.50
P.M.	Optional

[fol. 1200E]

SN-100 Monarch

Base —Square Corner, Front Pull, Bed Hi, 44 Coils, Burlap, #80 Nukraft, Felt, Plain, No Tufts
Seat Cushions —3 Spring Filled, Felt Upholstered
Back Pillows —None—Upholstered Back
Trim —Self Welt or Equal
Cover —80¢ to 85¢—54" Width
Preferred Cover—Langday (U.S. Pile Fabric) 75¢—54"

Arms	—Upholstered (Pittsburgh)
Back	—Upholstered (Pittsburgh)
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... $59.50
	Suggested Resale..... 115.00
	Royalty..... 1.50
	P.M..... Optional

SN–11 Lawson

Base	—Bed Hi, Square Corner, Front Pull, Built on Seng #48 Frame or Equal, Burlap and 100% Felt or Burlap, Sisal Pad and Felt.
Seat Cushions	—3 Spring Filled, Felt Upholstered
Back Pillows	—3 Attached Spring Filled, Felt Upholstered
Highrise	—Burlap, #80 Nukraft, Felt
Mattress	—8 Oz. ACA, Tuftless
Trim	—Self Welt or Equal
Cover	—80¢ to 85¢—54" Width Preferred Cover—#990 (Southern Fabrics) 72½¢—54"
Arms	—Upholstered Lawson (Cleveland #5055)
Back	—Upholstered Lawson (Cleveland #5055) attached spring cushions
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... $59.50
	Suggested Resale..... 115.00
	Royalty..... 1.50
	P.M..... Optional

SN–12 London

Base	—Bed Hi, Square Corner, Front Pull, Built on Seng #48 Frame or Equal, Burlap and 100% Felt or Burlap, Sisal Pad and Felt
Seat Cushions	—3 Spring Filled, Felt Upholstered
Back Pillows	—None—Upholstered back
Highrise	—Burlap, #80 Nukraft, Felt,
Mattress	—8 Oz. ACA, Tuftless
Trim	—Self Welt or Equal

Cover	—80¢ to 85¢—54″ Width Preferred Cover—"Monarch" (A. Rydell) 42½¢—54″
Arms	—Upholstered London (Cleveland #5056)
Back	—Upholstered London (Cleveland #5056)
Packing	—200 Test Carton or Paper Bags

Wholesale Price	$62.75
Suggested Resale	125.00
Royalty	1.50
P.M.	Optional

Note: Rothschild's "Famous" 36″ at 16¾¢ recommended as a suitable base cloth for first six couches, using random reverses from stock for reverses on pillows and pad.

[fol. 1201E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1017

MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 12th day of September, 1936, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and The Colorado Mattress Manufacturing Company, a partnership, having a regular place of business at Denver in the State of Colorado, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, within an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and sell Sealy Products therein,

[fol. 1202E] Now, Therefore, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy trade-name, and/or trade marks, or in any other fashion the work and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studio couches, bed springs, box springs, pillows and cushions, and will do so under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trademarks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all its members, change said specifications and/or promulgate specifications for additional Sealy Products. When [fol. 1203E] new specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property

of Sealy, or which Sealy controls or has interest in, now or in the future while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds (2/3) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and [fol. 1204E] patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged in-

fringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termi- [fol. 1205E] nation or breach of this contract, all rights given to Manufacturer hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows: All of Montana, Wyoming, Utah, Colorado, Arizona and New Mexico; the following Counties in South Dakota, to wit: Butte, Meade, Lawrence, Pennington, Custer, Washington, Fall River and Shannon; also

the following counties in Nebraska to wit: Sioux, Daws, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel.

[fol. 1206E] Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interests of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person, partnership, association or corporation to manufacture and sell Sealy Products.

Sales in or Shipments to Manufacturer's Territory

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long

as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, $10.00 for each mattress, studio couch or other Sealy Product sold or [fol. 1207E] shipped into Manufacturer's exclusive territory by Sealy, and $10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said $10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of $10.00 for each mattress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

[fol. 1208E] Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best efforts to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free [fol. 1209E] access to all of said records and accounts and

the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to them a Sealy label embodying a Sealy trade mark or trade name. No Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise.

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said, designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, tobether with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of fifty [fol. 1210E] labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under

this contract, the following amount for Sealy labels ordered under the provisions of said paragraph 20:

Labels for mattresses or upholstered box springs:

Class I	Selling at wholesale for	$10.75 or less	.25¢ each
Class II	" " " from	10.75 to $13.00	.35¢ "
Class III	" " " "	13.01 to 15.50	.50¢ "
Class IV	" " " "	15.51 to 17.75	.75¢ "
Class V	" " " "	17.76 to 21.00	$1.00 "
Class VI	" " " "	21.01 and up	1.50 "

Labels for Studio Couches:

Class I	Selling at wholesale for	$16.00 or less	.25¢ each
Class II	" " " from	16.01 to $20.00	.35¢ "
Class III	" " " "	20.01 to 25.00	.50¢ "
Class IV	" " " "	25.01 to 30.00	.75¢ "
Class V	" " " "	30.01 to 35.00	$1.00 "
Class VI	" " " "	35.01 and up	1.50 "

Labels for Bed Springs:

Class I	Selling at any price	.15¢ each

Labels for Pillows and Cushions:

If Manufacturer manufactures and/or sells pillows and/or cushions under this contract, Sealy shall have the right to set the label charges for the same.

Minimum Consideration

22. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of $100.00 per month for the first six months immediately following the effective date of this contract; $125.00 per month for the next six months; $150.00 per month for the next six months; $150.00 per month for the next six months; $150.00 Per month for each month thereafter.

[fol. 1211E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness [fol. 1212E] then owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly

executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

Transfers of Sealy Stock, Option in Sealy to Buy Manufacturer's Stock

24. On each stock certificate or voting trustees' certificate for Sealy stock issued to Manufacturer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates, other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desires to sell or transfer, or owns—in the case of termination, at the price of $100.00 per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy satis- [fol. 1213E] factory evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona-fide offer to buy, whether such offer be for more or less than $100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the

party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturer's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of $100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " " as shown and delimited on Sealy territories [fol. 1214E] Map No. 2, attached hereto, made part hereof, and marked Exhibit "C".

Termination Without Arbitration

26. In the event Manufacturer shall become insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The

three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The arbitration Board may make its own investigation, and may hear both [fol. 1215E] sides orally or in writing. Failure by either of the parties to take the steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu thereof. The arbitrators in their decision may assess the costs of the arbitration proceedings against any or all parties thereto.

Termination No Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. [fol. 1216E] When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under This Contract

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the territory herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date.

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by either of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

[fol. 1217E] 34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By "H. E. Wolf", President.

Attest:

"R. G. Culp", Asst. Secretary.

The Colorado Mattress Manufacturing Company, By Morris Stein, Morris Nierenberg.

——, ——.

[fol. 1218E] EXHIBIT A

Specifications for Sealy Mattresses

Sealy Fastasleep

Cover	—6 Oz. Blue & White Stripe, 16¢ to 18¢ Yd.
Burlap	—8 Ounce
Filling	—35 Pounds Felt (Good Millrun Linters)
Vents	—Eight
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	— Taped Roll Edge Taped Handles
Unit	—Spring Wire 10 x 18 180 coils 36 Outside Coils Lengthwise (Outside Edge) 40 Center Coils, 5 x 8, 14 Gauge Balance of Unit, 13 x 8, 104 Coils 14½ Gauge
Packing	—200 Test Carton
Marks	—Sealy Fastasleep Selling Price..... $10.75 Resale Price..... 19.75

Sealy Truease

Cover	—Panel Damask, 32¢ to 35¢ Yd. Border to Match
Burlap	—8 Ounce
Filling	—35 Pounds Felt (Millrun Linters)
Vents	—Eight
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	— Mercerized-Tape Edge Inside Roll Edge Tape Handles
Unit	—Spring Wire 10 x 19 190 Coils 38 Outside Coils Lengthwise (Outside Edge) 40 Center Coils, 5 x 8, 14 Gauge Balance of Unit, 14 x 8, 112 Coils 14½ gauge
Packing	—200 Test Carton

Marks	—Sealy Truease	
	Selling Price	$13.00
	Resale Price	24.50
	P.M.	.50
	Sealy Natural Rest	
Cover	—Panel Damask, 40¢ to 45¢ Yd. Prebuilt Border, Recco #3319	
Filling	—2 56 x 77 2½ Oz. Sisal Pads 27 Lbs. Felt (Millrun Linters)	
Vents	—Eight	
Buttons	—78 4 x 6 Diamond Tuft	
Tailoring	— Mercerized Tape Edge Inside Roll Edge Taped Handles	
Unit	—Spring Wire 12 x 20 240 Coils 40 Outside Edge Coils Lengthwise 60 Center Coils, 6 x 10, 15 Gauge, with close centers Balance of Unit, 15 gauge coils, Reg. Centers, 14 x 10, 140 Coils	
Packing	—200 Test Carton	
Marks	—Sealy Natural Rest	
	Selling Price	$15.50
	Resale Price	29.50
	P.M.	.75
[fol. 1219E]	Sealy Airvent	
Cover	—Panel Damask, 55¢ to 60¢ Yd. Prebuilt Border, Recco 3465	
Filling	—2 56 x 77 2½ Oz. Sisal Pads 27 Lbs. Felt (Fancy 1st Cut Linters)	
Vents	—Eight	
Buttons	—78 4 x 6 Diamond	
Tailoring	— Mercerized Tape Edge Inside Roll Enge Taped Handles	

Unit —Spring Wire 12 x 20 240 Coils
40 Outside Edge Coils Lengthwise
60 Center Coils, 6 x 10, 15 Gauge
with close centers
Balance of Unit, 15 Gauge Coils,
Reg. Centers, 14 x 10.
140 Coils
Packing —200 Test Carton
Marks —Sealy Airvent

Selling Price	$17.75
Resale Price	34.50
P.M.	1.00

Sealy Rest Tuftless

Cover —Panel Damask, 55¢ to 60¢ Yd.
Prebuilt Border, Recco # 3465
Filling —2 50 x 72 Nukraft Pads made by
the B. F. Goodrich Co.
20 Lbs. Felt (Fancy 1st. Cut Linters)
Unit —Spring Wire 12 x 20 240 Coils
40 Outside Edge Coils Lengthwise
60 Center Coils, 6 x 10, 15 Gauge,
with close centers
Balance of Unit, 15 Gauge Coils
Reg. Centers, 14 x 10,
140 Coils
Packing —200 Test Carton
Vents —Eight
Tailoring —Mercerized Tape Edge
Inside Roll Edge
Taped Handles
Marks —Sealy Rest Tuftless

Selling Price	$21.00
Resale Price	39.50
P.M.	1.00

Sealy Enchanted Nights

Cover —Panel Damask, 55¢ to 60¢ Yd.
Prebuilt Border, Recco 3319–B
Filling —Inside Sheeting Cover
32 Lbs. Felt (Fancy 1st. Cut Linters)

Unit —Muslin Pocket Coil, 15½ Gauge Spring Wire Coils 5½" High 3" Top and Bottom 5 Full Turns Tied 4 Ways Top and Bottom Approximate Weight per Coil ¾ Ounces 26 x 19 494 Coils

Vents —Eight

Buttons —78 4 x 6 Diamond Tuft

Tailoring —Mercerized Tape Edge
Inside Roll Edge
Taped Handles

Packing —200 Test Carton

Marks —Sealy Enchanted Nights

Selling Price	$21.00
Resale Price	39.50
P.M.	1.00

[fol. 1220E] Sealy Super Rest

Cover —Panel Damask, 70¢ to 75¢ Yd.
Prebuilt Border, Recco 3191–B

Filling —2 50 x 72 Nukraft Pads made by the B. F. Goodrich Co.
15 Lbs. Staple Cotton, Garnetted, 4# Lambs Wool

Unit —Spring Wire 14 x 22 308 Coils
44 Outside Edge Coils Lengthwise
72 Center Coils, 6 x 12, 15 Gauge, with close centers
Balance of Unit, 15 Gauge, with regular center, 16 x 12, 192 Coils

Vents —Eight

Finish —Mercerized Tape Edge
Inside Roll Edge
Taped Handles

Packing —200 Test Carton

Marks —Sealy Super Rest

Selling Price	$25.75
Resale Price	49.50
P.M.	2.00

Sealy Tuftless

Cover	—Panel Damask, or All-Over Damask 55¢ to 60¢ Yd.
Filling	—Strict Middling Harsh 7/8" Staple Cotton or better, Ginned or Garnetted
Tailoring	—Plain Tape Edge Taped Handles No Tufts
Weight	—Without Ticking—Full 50 Lbs.
Packing	—200 Test Carton
Marks	—Sealy Tuftless

Selling Price	$21.00
Resale Price	39.50
P.M.	21.00

[fol. 1221E] State of Colorado,
City and county of Denver, ss:

Morris Stein, being first duly sworn, upon oath deposes and says that he has read the above and foregoing "Manufacturer's Contract", and that he knows of his own knowledge that it is a true and correct copy of the original contract in the possession of The Colorado Mattress Manufacturing Company, at 2363 Larimer Street, Denver, Colorado.

Morris Stein.

Subscribed and sworn to before me this 5th day of January, 1944. Witness my hand and notarial seal.

My commission expires December 3, 1947.

Anne G. Perlmutter, Notary Public.

[fol. 1222E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1018

MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 15 day of December, 1937, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and Sealy Mattress Company of Northern California a California corporation, or a partnership, of an individual, having a regular place of business at Oakland in the State of California, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, with an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and seel Sealy Products therein, [fol. 1223E] Now, Therefore, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy trade-name, and/or trade marks, or in any other fashion the work and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and at its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studio couches, bed springs, box-springs, pillows and cushions, and will do so under and strictly in accordance with Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trademarks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all its members, change said specifications and/or promulgate specifications for additional Sealy Products. When new [fol. 1224E] specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property

of Sealy, or which Sealy controls or has interest in, now or in the future while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacture, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds (2/3) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and [fol. 1225E] patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any al-

leged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termination or breach of this contract, all rights given to Manufac- [fol. 1226E] turer hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows:

All of the State of California included within the following boundary lines:

Beginning at Fort Rose on the Pacific Ocean thence to Lytton to Middletown to Arbuckle to Knights Landing to Woodland to Davis to Rio Vista to Byron to Mountain House to Altamont to Livermore to Hollister to The Pinnacles National Monument to Soledad to Big Spur on the Pacific Ocean, and including all of the said towns except Big Sur and Livermore.

[fol. 1227E] Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interests of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person,

partnership, association or corporation to manufacture and sell Sealy Products.

This paragraph not a part of this Agreement.

Sealy, Incorporated, By ——, ——. Sealy Mattress Co. of N. Cal. By Seniel Ostrow.

Sales in or Shipments to Manufacturer's Territory

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture, or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, $10.00 for each mattress, studio couch or other Sealy Product sold or [fol. 1228E] shipped into Manufacturer's exclusive territory by Sealy, and $10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said $10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of $10.00 for each mattress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

[fol. 1229E] Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best efforts to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing

of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free [fol. 1230E] access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to them a Sealy label embodying a Sealy trade-mark or trade name. No Sealy trade-mark or trade-name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manu-

facturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy Labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum [fol. 1231E] of fifty labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 20:

Labels for mattresses or upholstered box springs:

Class I	Selling at wholesale for			$10.75 or less	.25¢	each
Class II	"	"	"	from 10.76 to $13.00	.35¢	"
Class III	"	"	"	" 13.01 to 15.50	.50¢	"
Class IV	"	"	"	" 15.51 to 17.75	.75¢	"
Class V	"	"	"	" 17.76 to 21.00	$1.00	"
Class VI	"	"	"	for 21.01 and up	$1.50	"

Labels for Studio Couches:

Class I	Selling at wholesale for			$16.00 or less	.25¢	each
Class II	"	"	"	from 16.01 to $20.00	.35¢	"
Class III	"	"	"	" 20.01 to 25.00	.50¢	"
Class IV	"	"	"	" 25.01 to 30.00	.75¢	"
Class V	"	"	"	" 30.01 to 35.00	$1.00	"
Class VI	"	"	"	for 35.01 and up	$1.50	"

Labels for Bed Springs:

Class I	Selling at any price	.15¢	each

Labels for Pillows and Cushions:

If Manufacturer manufactures and/or sells pillows and/or cushions under this contract, Sealy shall have the right to set the label charges for the same.

Minimum Consideration

22. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of $100.00 per month for the first six months

immediately following the effective date of this contract; $125.00 per month for the next six months; $150.00 per month for each month thereafter. However, so long as Mr. Seniel Ostrow is the legal and beneficial owner of more than 50% of the capital stock of Manufacturer, and so long as he pays the royalties and minimum consideration required to be paid by him to Sealy by a contract similar to this one, dated September 1, 1936, between said Ostrow and Sealy, Manufacturer shall not be obligated to make the payments required by this paragraph, but said Manufacturer shall be so obligated as soon as and continue as long as any default by said Ostrow under the above provisions exists.

[fol. 1232E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenh day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This

credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness then [fol. 1233E] owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy, Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

Transfers of Sealy Stock, Option in Sealy to Buy Manufacturer's Stock

24. On each stock certificate or voting trustees' certificate for Sealy stock issued to Manufacturer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates, other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desires to sell or transfer, or owns—in the case of termination, at the price of $100.00

per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy satis- [fol. 1234E] factory evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona fide offer to buy, whether such offer be for more or less than $100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturer's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of $100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " " as shown and delimited on Sealy territories Map No. 2, attached hereto, made part hereof, and marked [fol. 1235E] Exhibit "C".

This paragraph is not a part of this Agreement.

Sealy, Incorporated, By ——, ——. Sealy Mattress Co. of N. Cal., By Seniel Ostrow.

Termination Without Arbitration

26. In the event Manufacturer shall become insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The Arbitration Board may make its own investigation, and may hear both sides orally [fol. 1236E] or in writing. Failure by either of the parties to take the steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the

other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu thereof. The arbitrators in their decision may assess the costs of the arbitration proceedings against any or all parties thereto.

Termination No Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. [fol. 1237E] When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under this Contract

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the terfitory

herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by ether of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

[fol. 1238E] 34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy Incorporated, By W. E. Wolf, President, E. H. Bergmann, Acting President.

Attest:

R. G. Culp, Asst. Secretary.

Sealy Mattress Company of Northern California, By [Copy illegible], Pres.

——, ——

[fol. 1239E] EXHIBIT A

Specifications for Sealy Mattresses

Sealy Fastasleep

Cover	—6 Oz. blue and white stripe
Burlap	—8 Oz.
Filling	—35 lbs. felt (Good Millrun Linters)
Vents	—4
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Outside Roll or French Edge, as desired. Cloth handles
Unit	—Spring Wire 10 x 18 180 Coils 36 Outside coils lengthwise (Outside Edge) 40 Center coils, 5 x 8, 14 Gauge Balance of Unit, 13 x 8, 104 Coils, 14½ Gauge
Packing	—200 Test Carton
Marks	—Sealy Fastasleep Printed Label Sealy Fastasleep Supplementary Label Wholesale Price..... $11.00 Resale Price..... $19.95 Royalty..... .25

Sealy Truease

Cover	—Damask, as specified, or 6 Oz. stripe
Burlap	—7 or 8 Oz.
Border	—Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling	—38 lbs. Felt (Millrun Linters)
Finish	—Tape Edge
Buttons	—78 4 6 Diamond Tuft
Tailoring	—Inside Roll Handles
Unit, 180–190 Coils, Based on 190 Coils	—Spring Wire 10 x 19 54 Outside Edge Coils, All Around, 14 Gauge 40 Center Coils, 5 x 8 14 Gauge Balance of Unit, 12 x 8, 96 Coils 14½ Gauge # 17 Gauge Helicals, ⅜" O.D.
Packing	—200 Test Carton

Marks —Sealy Truease Printed Label &
Supplementary Label
Wholesale Price..... $12.75
Resale Price..... $24.75
Royalty..... .35

Sealy Natural Rest

Cover —Damask, as specified, or ACA
Burlap —7 or 8 Oz.
Border —Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling —38 lbs. Felt (Millrun Linters)
Finish —Mercerized Tape Edge
Buttons —78 4 x 6 Diamond Tuft
Tailoring —Inside Roll Handles
Unit —Spring Wire 12 x 20 240 Coils
60 Outside edge coils all around, 14 Gauge
60 Center Coils, 6 x 10, 14½ Gauge
Balance of Unit, 15 Gauge Coils, Regular Centers, 12 x 10, 120 Coils
#17 Gauge Helicals, ⅜" O. D.
Packing —200 Test Carton
Marks —Sealy Natural Rest Woven Label
Sealy Natural Rest Supplementary Label
Wholesale Price..... $15.50
Resale Price..... $29.50
Royalty..... .50

[fol. 1240E]

Sealy Airvent

Cover —Damask, as specified, or ACA
Burlap —7 or 8 Oz.
Border —Prebuilt, with embroidered eyelets as specified, or eyelet
Filling —38 lbs. Fancy 1st Cut Linters
Finish —Mercerized Tape Edge
Buttons —78 4 x 6 Diamond
Tailoring —Inside Roll Handles
Unit —Spring Wire, 12 x 20, 240 Coils

240 Coils —60 Outside Edge Coils All Around, # 14 Gauge
60 Center Coils, 6 x 10 with Close centers, 14½ Gauge
Balance of Unit, Regular Centers, 12 x 10, 120 Coils, 15 Gauge
17 Gauge Helicals, ⅜" O.D.

Packing —200 Test Carton

Marks —Sealy Airvent Woven Label
Sealy Airvent Supplementary Label

Wholesale Price	$17.75
Resale Price	$34.50
Royalty	.75

Sealy Enchanted Nights

Cover —Damask, as specified, or ACA

Border —Prebuilt

Filling —Burlap Spring Cover, 7 or 8 Oz.
38 Lbs. Fancy 1st Cut Linters

Unit —Spring Wire, 13 x 22, 286 Coils

286 Coil —66 Outside Edge Coils All Around
14 Gauge Wire 66 Center Coils, 6 x 11, # 14½ Ga. Wire
Balance of Unit, 15 Gauge Coils, 14 x 11, 154 Coils

Tailoring —Inside Roll Edge, Handles

Finish —Mercerized Tape Edge

Buttons —78 metal, 4 x 6 Diamond Tuft

Packing —200 Test Carton

Marks —Sealy Enchanted Nights Woven Label
Sealy Enchanted Nights Supplementary Label

Wholesale Price	$21.00
Resale Price	$39.50
Royalty	1.00

Sealy Tuftless

Cover —Damask, as specified, or ACA

Border —Plain

Tailoring —Outside Roll Edge, Tape Edge, Handles

Filling —50 lbs. Strict Middling Harsh 7/8" Staple Cotton or better, ginned or garnetted
Finish —Mercerized Tape Edge
No Tufts
Packing —200 Test Carton
Marks —Sealy Tuftless Woven Label
Sealy Tuftless Supplementary Label

Wholesale Price	$21.00
Resale Price	$42.50
Royalty	1.00

[fol. 1241E]

Sealy Rest

Cover —Damask, as specified, or ACA
Burlap —8 Oz.
Border —Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling —2—52 x 73 Nukraft Pads, made by the B.F. Goodrich Company
20 Lbs. Felt (Fancy 1st Cut Linters)
Finish —Mercerized Tape Edge
Unit —Spring Wire, 12 x 20, 240 Coils
240 Coils —60 Outside Edge Coils All Around, #14 Ga. 60 Center Coils, 6 x 10, 14½ Ga., with close centers.
Balance of Unit, 15 Ga. Coils, regular centers, 12 x 10, 120 Coils
#17 Ga. Helicals, 3/8" O.D.
Packing —200 Test Carton
Tailoring —Inside Roll Handles
Marks —Sealy Rest Tuftless Woven Lable
Sealy Rest Tuftless Supplementary Label

Wholesale Price	$23.50
Resale Price	$44.50
Royalty	1.00

Sealy Super Rest

Cover —Damask, as specified, or 8 Oz. Herringbone ACA
Burlap —7 or 8 Oz.

Border	—Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling	—2—52 x 73 Nukraft Pads made by the B.F. Goodrich Company 20 lbs. Fancy 1st Cut Linters
Finish	—Mercerized Tape Edge
Tailoring	—Inside Roll Handles
Unit	—Spring Wire, 13 x 22, 286 Coils
286 Coil	—66 Outside Edge Coils All Around, #14 Gauge 66 Center Coils, 6 x 11, 14½ Gauge Balance of Unit, 15 Gauge, 14 x 11, 154 Coils
Packing	—200 Test Carton
Marks	—Sealy Super Rest Woven Label Sealy Super Rest Supplementary Label

Wholesale Price	$28.75
Resale Price	$54.50
Royalty	1.50

Sealy Sleep Ensemble Base

Cover	—Damask, as specified, or ACA
Border	—5 Row Cord Edge
Base	—Helical Tied Unit nailed to wood frame and snubbed
Coils	—90 #11 Standard Wire Single Cone
Slats	—10 1 x #11 Steel
Border Wire	—#0
Helicals	—72 Pr. #16 Standard Wire Interlocked
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap placed over coils
Unit	—180 Coils, #13 Standard Innerspring —Unit, sewed on top of coils
Filling	—1 Sisal Pad Allover 56″ x 78″ 7 lbs. Fancy 1st Cut Linters
Top Border	—#4, attached to unit by clips

[fol. 1242E]

Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Four
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting

Sealy Sleep Ensemble Mattress

Cover —Damask, as specified or ACA
Boxing —2½"
Filling —1 52 x 73 Nukraft Pad
28 Lbs. Fancy 1st Cut Linters
Tailoring —2 Row Cord Edge
No Tufts
Packing —200 Test Carton
Marks —Sealy Sleep Ensemble Woven Label
Sealy Sleep Ensemble Supplementary Label

Wholesale Price	$35.75
Resale Price	$69.50
Royalty	2.00

Sealy Sunspun

Cover —Sunshine Satin or Equal
Preferred Cover—Sunshine Satin (Arthur Kahn)
75¢ to 85¢ dependent on color
Border —4 Row Flexo Cord
Burlap —7 or 8 Oz.
Filling —2 Nukraft Pads 52 x 73
20 lbs. # 1 Staple Cotton Felt
Tailoring —4 Metal Handles
Inside Roll Edge
Finish —Cord Edge
No Tufts
Unit —240 Coil Durolife Innerspring Unit
Spring Wire 12 x 20 240 Coil
60 Outside Edge Coils all around.
14 Gauge
60 Center Coils, 6 x 10 with close centers,
14½ Gauge. # 17 Ga. Helicals, ⅜" O. D.
Packing —200 Test Carton
Marks —Sealy Sunspun Woven Label
Sealy Sunspun Supplementary Label

Wholesale Price	$35.75
Resale Price	$69.50
Royalty	2.50

Construction Details—Made with 240 Coil unit. Burlap over unit. Nukraft on both sides of unit. Hair pad on top of Nukraft on each side, 10 lbs. Staple cotton felt on each side. Made with inside roll, cord edge. Made tuftless.

Sealy Airlite Ensemble Base

Cover	—Linen Tick 40" Wide
Border	—5 Row Flexo Cord
Filling	—1 Nukraft Pad 52 x 73 5 lbs. Staple Cotton Felt
Coils	—90 Coil, # 11 Standard or Premier Wire coils, 10 x 9
Slats	—Ten 1 x # 11 Steel
Border Wire	—# 0
Helicals	—72 pr., # 16 Standard or Premier Wire Interlocked
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap
Unit	—180 Coils, # 13 Standard or Premier Innerspring Unit sewed on top of coils
Filling	—1 Nukraft Pad 52 x 73 5 lbs. # 1 Staple Cotton Felt

[fol. 1243E]

Top Border	—# 4 attached to Unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Eight
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting

Sealy Airlite Ensemble Mattress

Cover	—Linen Tick 40" Wide
Boxing	—2½"
Filling	—15 lbs. Staple Cotton Felt 1 Nukraft Pad 52 x 73
Tailoring	—2 Row Flexo Cord Edge
Buttons	—4 x 6 Diamond (78)
Packing	—200 Test Carton

Marks —Sealy Airlite Ensemble Woven Label
Sealy Airlite Ensemble Supplementary Label

Wholesale Price	$47.50
Resale Price	$95.00
Royalty	3.00

Construction Details

Mattress —Made with 1 Nukraft pad in the center, 7½ lbs. of staple cotton felt on each side. Tuftless

Base —Made the same as our regular Sleep Ensemble base. Helical tied 90 coil spring on wood frome. 180 coil unit on top. Burlap in between. Burlap over top unit. 1 Nukraft pad, 5 pounds of staple cotton felt.

Sealy Super Sleep Ensemble Base

Cover —Sunshine Satin or equal

Border —4 Row Flexo Cord

Filling —1 Nukraft Pad 52″ x 73″
4 lbs. Staple Cotton Felt
7 or 8 Oz. Burlap placed over box spring coils.

Construction —Ninety # 10 Gauge Wire Standard or Premier—10 Rows long, 9 Coils each, hand tied with twine 8 ways

Border Wire —# 4 Gauge Steel attached by metal clips

Unit —12 Rows Wide, 22 Rows Deep,

264 Coils —264 Coils
200 Center Coils—15 Gauge Standard or Premier Wire
64 Outside Edge Coils—14 Ga. Standard or Premier Wire
264 Coil Innerspring Unit attached to top of box spring base with metal clips
Burlap 7 or 8 Oz. placed on top of innerspring unit.

Top Border Wire—#4 attached to top of unit with 34 clips
Handles —Taped cloth
Bottom Ticking —550 Sheeting
Frame —Wood reinforced and or sides with 8 cross slats. Finished size 52½ x 74 4½" radius all corners

[fol. 1244E] Sealy Super Sleep Ensemble Mattress

Cover —Sunshine Satin or Equal
Boxing —3"
Trim —Bead Edge with 1 Row Flexo Cord Two Colored Braid Cord
Filling —15 Lbs. #1 Staple Cotton Felt
1 Nukraft Pad
2 All Horse Mane Hair Pads
2 Lambs Wool Bats 4 lbs.
No Tufts
Packing —200 Test Carton
Marks —Sealy Super Sleep Ens. Woven Label
Sealy Super Sleep Ens. Supplementary Label

Wholesale Price	$ 75.00
Resale Price	$150.00
Royalty	$ 5.00

Construction Details Mattress

Mattress —Nukraft pad in center, hair pad on each side of Nukraft, sewed to the Nukraft by means of twine (similar to tufting). 7½ lbs. of staple cotton felt on each side of hair pads. Lambs wool pads on top of staple cotton felt, each side. (Lambs wool pads are not fastened to the felt in any way.)
Base —Burlap on top of box spring next to innerspring unit. #4 border wire around top unit, burlap on top of second unit. Cushioned with a Nukraft pad, 4½ lbs. staple cotton felt.

Sealy Enchanted Nights Style "B"

Cover	—Choice of 6½ oz. 56" Woven Goods, Patterns Covington, Waveland, or Kingsbury, available from the Blumenthal Print Works @ 26¢ a yd.
Burlap	—8 Oz.
Border	—4 Row Stitched, prebuilt with Felt and Muslin inside or vertical stitched border
Filling	—2 52 x 73 Nukraft Pads, made by the B. F. Goodrich Company 20 lbs. Felt (Fancy 1st cut linters)
Finish	—Mercerized Tape Edge, mattress completed on Tape Edge Machine
Unit	—240 Coil Durolife Innerspring Unit
Tailoring	—Inside Roll, Cloth Handles
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Style B Supplementary Label

Wholesale Price	$21.00
Resale Price	$39.50
Royalty	$ 1.00

Sealy Hotel Special Model "A"

Cover	—8 Oz. ACA Ticking
Burlap	—7 or 8 Oz.
Filling	—2 Nukraft Pads 20 lbs. 1st cut linter felt Filled in filling box
Finish	—Hand Roll Edge
Tailoring	—Small Cord Binding Jiffy Handles and Ventilators
Unit	—240 Coil Durolife Unit Spring Wire, 12 x 20, 240 Coils 60 Outside Edge Coils All Around, #14 Ga. 60 Center Coils, 6 x 10, 14½ Gauge, with close centers Balance of Unit, 15 Gauge Coils, Regular centers, 12 x 10, 120 Coils #17 Gauge Helicals, ⅜" O.D.

[fol. 1245E]

Tufts —Button Tufted
Packing —Carton
Marks —Sealy Hotel Special Model "A" Printed Label

Wholesale Price	$19.75
Resale Price	$00.00
Royalty	.50

Sealy Hotel Special Model "B"

Cover —6 Oz. ACA Ticking
Burlap —7 or 8 Oz.
Filling —38 lbs. 1st Cut Linter Felt
Filled in Filling Box
Finish —Machine Roll Edge.
Tailoring —Cloth Binding
Cloth Handles and Ventilators
Unit —240 Coil Durolife Unit
Spring Wire, 12 x 20, 240 Coils
60 Outside edge coils all around # 14 Ga.
60 center coils, 6 x 10, 14½ Ga., with close centers
Balance of Unit, 15 Gauge Coils, Regular centers, 12 x 10, 120 Coils
17 Gauge Helicals, ⅜" O.D.
Tufts —Button Tufted
Packing —Carton
Marks —Sealy Hotel Special Model "B" Printed Label

Wholesale Price	$13.75
Resale Price	$00.00
Royalty	.35

Little Darling Crib Mattress

Cover —3 yards Sateen
Boxing —Vertical Stitch Boxing including 1# conpressed felt
Filling —Spring Unit 26" x 50" x 4" high
100 Ft. # 2 Screen Wire
6# 1st Cut Linter Felt
Filled in Filling Box

Tailoring	—Ventilators—Cloth Binding	
Tufts	—Button Tufted	
Packing	—Wrapped in Paper	
Marks	—Sealy Little Darling Printed Label	
	Wholesale Price	$ 3.75
	Resale Price	$00.00
	Royalty	.10

Sealy Sleep Charm Posture Pillow

Cover	—3 yd. goods or equivalent	
Border	—4 row stitched border	
Filling	—36 lbs. felt including border	
Tufting	—Tape	
Finish	—Tape Edge, inner roll	
Handles	—Bound cloth handles	
Unit	—Durolife Innerspring Unit (180 Coil Minimum)	
	Wholesale Price	$11.00
	Resale Price	19.95
	Royalty	.25

Sealy Truease Posture Pillow

—To have same general specifications as the Sealy Truease.
Cover—Truease Ticking (Golding Bros.)

Wholesale Price	$12.75
Resale Price	24.75
Royalty	.35

[fol. 1246E] Sealy Natural Rest Posture Pillow

—To have same general specifications as the Natural Rest.
Cover—Natural Rest Ticking (Golding Bros.)

Wholesale Price	$15.50
Resale Price	29.50
Royalty	.50

Sealy Air Vent Posture Pillow

—To have the same general specifications as the Sealy Air Vent Cover—Duchess of Windsor Ticking (Blumentahl Print Works)

Wholesale Price	$17.75
Resale Price	34.50
Royalty	.75

Note—Filling optional as to use of Sisal Pads, Correen Fiber, Felt, etc., provided desired qualtiy is maintained.

[fol. 1247E] 4/28/37

Basic Specifications Sealy Couches

#1 Carlton (Rear Opener)

Cover	—20¢ in 36" width
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Base Decking	—Nukraft
Cushions	—Kapok or better
Trim	—Tape or Cord
Wholesale	$21.00
Resale	39.50

#1A Marlboro (Front Opener)

Cover	—20¢ in 36" width
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Base Decking	—Nukraft
Cushions	—Kapok or better
Trim	—Tape or Cord
Wholesale	$23.00
Resale	44.50

#1B Mayfair (Front Opener)

Cover	—20¢ in 36" width
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or better
Trim	—Tape or Cord
No Nukraft	

Round Corners

Wholesale	$21.00
Resale	39.50

#2 Cavalier (Rear Opener)

Cover	—20¢ in 36″ width
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Base Decking	—Nukraft
Cushions	—Kapok or better
Trim	—Tape or Cord

Pulomatic Metal Back & Arms

Wholesale	$25.50
Resale	49.50

#3 Windsor (Bed High)

Cover	—20¢ in 36″ width reverse
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord

Nukraft on Both Mattresses (Top Only)
Covered Back

Wholesale	$31.50
Resale	59.50

#4 Cogswell, Chippendale Queen Anne or Streamline (Front Opener)

Cover	—40¢ in 54″ width
Coils	—40 or better
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord
Base Decking	—Nukraft

Wholesale	$33.50
Resale	64.50

[fol. 1248E] (2)

#4A Cogswell Chippendale Queen Anne, or Streamline
(Front Opener)

Cover	—80¢ in 54" width
Coils	—40 or better
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord
Base Decking	—Nukraft

Wholesale	$36.50
Resale	69.50

#5 Cogswell Chippendale, Queen Anne, or Streamline
(Bed High)

Cover	—40¢ in 54" width, base cover reverse 50¢
Coils	—40 or better
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord

Nukraft on Both Mattresses (Top Only)

Wholesale	$42.50
Resale	79.50

#6 Cogswell Chippendale Queen Anne, or Streamline (Bed High)

Cover	—80¢ to 85¢ cover
Coils	—40 or better
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord

Nukraft on Both Mattresses (Both Sides)

Wholesale	$47.50
Resale	89.50

Promotional Numbers

Without Nukraft	Minimum Résale	$29.50
With Nukraft	Minimum Resale	34.50
Bed High	Without Nukraft	39.50

Note: Each Couch in the Resale Set-up is to have a Nukraft label on each piece having Nukraft in the upholstering.

Each Couch is to carry a class label showing the name of the couch and, if desired, the resale price.

[fol. 1249E] April 14, 1937

Specifications for Sealy Innerspring Units

1—Material entering into the manufacture of all coil and helical springs as used for the assembled innerspring units shall be hard-process, cold-drawn, open hearth steel spring wire of the following chemical analysis:

Carbon	.55/ .70
Manganese	.90/1.20
Phosphorus	.05 max.
Sulphur	.06 max.
Silicon	.10/ .25

2—The average ultimate tensile strength of such wire shall be as follows:

#14 and 14½ W. & M. Ga.—260,000 lbs. per sq. in.
#15 " " " " —265,000 " " " "

with a permissible variation of 25,000 lbs. per sq. in. in either direction, and an elastic limit of 80% of the ultimate, as specified above. The modulus of elasticity under tension shall fall within the range of from 29 to 30,000,000, and fatigue tests on assembled units must withstand a minimum of 100,000 compressions on the #15 ga. springs to one-half of their free height. (Best results in this respect are obtained by tempering springs, after forming, within a range of from 520 to 550 degrees Fahrenheit for a period of about 15 minutes.

3—The steel structure shall be of the shallow hardening or fine grain type, to impart optimum hardening and fatigue properties to the metal, free from any surface defects such as decarburization, cracks or fissures, and devoid of any internal laminations, banded inclusions or segregations. The finish shall be "bright", free from lime, with excess drawing compound removed by wiping.

4—Load springs shall be wound with not less than 5 turns, to a free height of 4¾" except border springs, which shall be 5⅛" high. The size of their top and bottom turns shall be such as to fit neatly into the finished overall dimensions of the unit as called for on the drawing, with the intermediate diameters to be selected to suit the following spring compression scales:

	#14 Ga. Compression	#14½ Ga. Compression	#15 Ga. Compression
1 lb. load	5/8"	3/4	7/8"
2 lb. load	1-1/4"	1-1/2"	1-5/8"
3 lb. load	1-7/8"	2-1/4"	2-5/16"
4 lb. load	2-3/8"	2-5/8"	2-11/16"
5 lb. load	2-3/4"	3"	3-1/16"
6 lb. load	3"	3-3/8"	3-7/16"
7 lb. load	3-1/4"	3-11/16"	3-13/16"
8 lb. load	3-7/16"	3-7/8"	4"
9 lb. load	3-5/8"	4-1/16"	4-3/16"
10 lb. load	3-13/16"	4-1/4"	—
11 lb. load	4"	—	—
12 lb. load	4-3/16"	—	—
13 lb. load	4-3/8"	—	—

[fol. 1250E] Tie Springs or helicals shall be as shown and called for on the drawing wherever round top load springs are used, assembled in such a way as to span the width of the unit (not its length). Where off-set top turns are used on the load springs, the size of the helical tie springs may be varied to best suit the characteristics of such construction provided, however, that they be likewise assembled across the width of the unit. Eccentric or "edge" coil springs must comply with the load characteristics of the #14 Ga. coils as above listed.

The grouping of spring rows may be varied from that shown on the drawing provided the total number of springs is not changed thereby. Thus for the 20 rows of 12 coils each on the 240 coil unit, 16 rows of 15 coils may be substituted.

5—Tolerances: The permissible variation in wire diameter shall be confined to ±0.001 from the specified gauge. Compression tests on load springs may vary ±¼" from the height stated in the tabulation of the foregoing paragraph, and total height of springs may vary ±3/32" from that specified. The total number of turns in each spring may vary ±½ turn, and the total weight specified on the drawing for each of the three types of innerspring units, shall be adhered to as closely as possible.

6—For the purpose of comparison with government specifications, the following method for determination of the average "resiliency" of any innerspring unit is suggested: As may be noted from the tabulation in Paragraph 4, the #14 Ga. springs shall have a capacity of 4⅔" lbs. at 2⅝" compression, and the 14½ Ga. 3 lbs., and the 15 Ga.

2.9 lbs. at 2¼" compression from their free height, equivalent to a 2½" uniform depth of the innerspring unit, when so loaded.

Taking the 240 coil unit as an example, we have 4 sections composed of 3 different types of load springs, each section constituting ¼ of the total area of the unit covering 52 x 73, or 3796 sq. inches, equivalent to 26.36 sq. ft. Each section area equals, therefore, 949 sq. in., equivalent to 6.59 sq. ft., and is composed of 60 individual springs, or 9.1 springs per sq. ft. of area. When compressed to a uniform height of 2½", the load carried by the border section, as is 4⅜ lbs. x 9.1 springs, or 42.4 lbs. per sq. ft., which multiplied by 6.59 sq. ft. of the area, results in 279.4 lbs. load for this part of the innerspring unit. The center section springs will carry 3 lbs. x 9.1, or 27.3 lbs. per sq. ft., or 27.3 x 6.59 or 179.9 lbs. load for that part of the innerspring unit. The two intermediate panels will each carry 2.9 lbs. x 9.1, or 26.39 lbs. per sq. ft., or 173.9 lbs. total for each panel, so that the total load sustained by the innerspring unit, when compressed to a uniform depth of 2½", is

	279.4	lbs.
plus	179.9	
plus	173.9	
plus	173.9	
or	807.1	lbs.

for the entire area of 26.36 sq. ft.; dividing one into the other, an average sustained load of 30.6 lbs. per sq. ft. under compression to 2½" depth, is arrived at.

7—The Sealy Mattress Company's drawings #3616, 3617 and 3618, illustrating the 286, 190 and 240 coil units respectively, and dated January 5-6, 1937, shall form part of these specifications.

+ Plus
— Minus

[fol. 1251E] 6/23/37

Amended Sealy Box Spring Specifications

Sealy Sleep Charm

Cover	—Damask, as specified, or 6 Oz. Stripe
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. of Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Tape edge to match mattress
Packing	—200 Test Carton
Marks	—Sealy Sleep Charm Printed Label

Sealy Sleep Charm Supplementary Label

Selling Price	$11.50
Resale Price	22.75
Royalty	.25
P.M.	.25

Sealy Truease

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Tape edge to match mattress.
Packing	—200 Test Carton

Marks	—Sealy Truease Printed Label Sealy Truease Supplementary Label Selling Price..... $13.75 Resale Price..... 26.75 Royalty..... .35 P.M..... .50

[fol. 1252E]

Sealy Natural Rest

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Mercerized Tape Edge
Packing	—200 Test Carton
Marks	—Sealy Natural Rest Woven Label Sealy Natural Rest Supplementary Label Selling Price..... $15.50 Resale Price..... 29.50 Royalty..... .50 P.M..... .75

Sealy Airvent

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs., #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied

Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Airvent Woven Label Sealy Airvent Supplementary Label

Selling Price	$17.75
Resale Price	34.50
Royalty	.75
P.M.	1.00

[fol. 1253E] Sealy Enchanted Nights

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of coils 21–6/10 lbs., #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Supplementary Label

Selling Price	$21.00
Resale Price	39.50
Royalty	1.00
P.M.	1.00

Sealy Tuftless

Cover	—8 Oz. Stripe, or approved alternate.
Border	—To Match
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)

Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of coils 21–6/10 lbs., #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Tuftless Woven Label Sealy Tuftless Supplementary Label

Selling Price	$21.00
Resale Price	42.50
Royalty	1.00
P.M.	1.00

[fol. 1254E]

Sealy Rest

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, or approved alternate
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 Lbs. Fancy 1st Cut Cotton Linters 1–52 x 73 Nukraft Pad
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs., #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Rest Tuftless Woven Label Sealy Rest Tuftless Supplementary Label

Selling Price	$23.50
Resale Price	44.50
Royalty	1.00
P.M.	1.50

Sealy Super Rest

Cover	—Damask, as specified, or 8 Oz. Herringbone ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 Lbs. #3 Fancy 1st Cut Lint 1–52 x 73 Nukraft Pad
Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of coils 21–6/10 lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Super Rest Woven Label Sealy Super Rest Supplementary Label

Selling Price	$25.75
Resale Price	49.50
Royalty	1.50
P.M.	1.75

[fol. 1255E]

Sealy Stylcrest

Cover	—As specified
Border	—4 Row Flexo Cord
Bottom Tick	—Drill
Burlap	—7 or 8 Oz.
Filling	—1 Nukraft Pad 52 x 73 2 Lbs. Lambs Wool
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of Coils 19½ lbs., #10 Standard or Premier Wire
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to coils by means of Clips.
Packing	—200 Test Carton

Marks	—Sealy Stylcrest Woven Label Sealy Stylcrest Supplementary Label Selling Price..... $31.50 Resale Price..... 59.50 Royalty..... 2.00 P.M..... 2.00

Sealy Sunspun

Cover	—As specified
Border	—4 Row Flexo Cord
Bottom Tick	—Drill
Burlap	—7 or 8 Oz.
Filling	—1 Nukraft Pad 52 x 73 7 Lbs. Staple cotton felt
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs., #10 Standard or Premier Wire Coils
Finish	—Cord Edge
Twine	—Italian Hemp
Border Wire	—#4 Acme, Attached to coils by means of Clips.
Packing	—200 Test Carton
Marks	—Sealy Sunspun Woven Label Sealy Sunspun Supplementary Label Selling Price..... $32.50 Resale Price..... 59.50 Royalty..... 2.00 P.M..... 2.00

[fol. 1256E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1020

WESTERN UNION

Joseph L. Egan, President

MEMPHIS, TENN. DEC. 2, 1948
I. A. WIENER
SEALY MATTRESS CO.
38 EVERETT ST.
ALLSTON, MASS.

WITHHOLD DELIVERIES OR SOLICITATION OF SEALY MERCHANDISE INTO FORMER FALL RIVER TERRITORY UNTIL I CALL YOU ON DECEMBER 6 OR 7. TERRITORY MAY NOT BE FREE OF LEGAL ENTANGLEMENTS UNTIL DECEMBER 31 BUT ORDERS CAN NOW BE TAKEN FOR DELIVERY AFTER THAT DATE

SEALY, INCORPORATED
J. R. LAWRENCE

DAY LETTER—PAID

[fol. 1257E] SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

ALLSTON, MASSACHUSETTS
Telephone Stadium 2-2280 - 2-2281
Thirty-Eight to Forty-Two Everett Street

November 29, 1948.

Sealy, Inc.,
1047 Florida St.,
Memphis, Tennessee.

Attention: Mr. J. R. Lawrence

Dear Mr. Lawrence:

We are in receipt of yours of November 24th, with reference to releasing territory, and adding new territory.

This letter will act as a means of releasing the State of Vermont, with the exception of the city of Brattleboro as agreed with Mr. Yulman of Schenectady.

We are adding the following counties to our territory, all located in Massachusetts: Bristol, Plymouth, Barnstable, Dukes, and Nantucket.

It is our understanding that this territory change becomes effective December 1, 1948.

Very truly yours, Sealy of Boston, I. A. Wiener.

[fol. 1258E] November 24, 1948.

Air Mail

Sealy Mattress Company
38 Everett Street
Allston, Massachusetts

Attn: Mr. I. A. Wiener

Dear Mr. Wiener:

Mr. Bergmann has authorized the addition of the following counties in the state of Massachusetts to your licensee agreement with Sealy, Inc.: Bristol, Plymouth, Barnstable, Dukes, and Nantucket. In connection with this, you are to write us a letter releasing the state of Vermont from your present license agreement and surrendering this territory back to Sealy, Inc.

As soon as we have your letter releasing the territory of Vermont, Sealy, Inc., will give you a letter officially incorporating the above named counties into your present license agreement.

Please give this your immediate attention as we would like to complete these formalities.

With best wishes,

Yours very truly, Sealy, Incorporated.

JRLawrence/b

cc—Mr. E. H. Bergmann.

[fol. 1359E]

WESTERN UNION

Joseph L. Egan, President

MEMPHIS, TENN. DEC. 8, 1948
J. R. LAWRENCE
C/O MRS. HORTENSE MacDONALD
ROBT. W. ORR & ASSOCIATES, INC.
4 WEST 58TH ST.
NEW YORK, N.Y.

ALLSTON SAYS WIRE WHETHER CAN SOLICIT BUSINESS IN FALL RIVER TERRITORY FOR DELIVERY JANUARY FIRST

SEALY, INC.
L. BALLARD

STRAIGHT—PAID

[fol. 1360E]

WESTERN UNION

Joseph L. Egan, President

MGN011PD=TDB ALLSTON MASS 8 132P=
SEALY INC=ATTN J R LAWRENCE=

1948 DEC 8 PM 1 27

PLEASE ADVISE RESULT REGARDING FALL RIVER TERRITORY CAN WE OR CAN WE NOT SOLICIT BUSINESS FOR JANUARY FIRST DELIVERY WIRE REPLY=

SEALY MATTRESS=

[fol. 1261E] December 15, 1948.

Sealy Mattress Company,
38 Everett Street,
Allston, Mass.

Attention: Mr. I. A. Wiener

Dear Mr. Wiener:

This is your authority to solicit and deliver Sealy merchandise at once to the accounts in the former Fall River territory that has been assigned to your plant. We were negotiating with the Osiasons for an extension on their deadline of November 30th to December 31st in return for their acquiescence to the cancellation of the contract. However, negotiations have broken down and we are taking immediate legal proceedings to fully protect the rights of Sealy, Incorporated and the Eagle Mattress Company.

The way is clear for you to solicit and deliver Sealy merchandise immediately and you will not have to wait until after the first of the year as we originally informed you.

Yours very truly, Sealy, Incorporated, J. R. Lawrence.

JRL/if

[fol. 1262E] R. C. 12/27/44.

This Agreement, Made and entered into this, the first day of May 1946, by and between Sealy, Inc., a Delaware Corporation, hereinafter called "Sealy" party of the first part, and Eagle Mattress Company, Inc., a corporation of Massachusetts, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans, and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, chairs matching the last four (4) men-

tioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which Sealy, may, from time to time, add to its products, whether or not such articles are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee.

I:3. "Territory" is defined as the area in which the Licensee shall have the exclusive right to manufacture and sell to retail stores Sealy products, and for such purpose only to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes and specifications.

[fol. 1263E] I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether

or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract

II:1. That party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products and use Sealy labels affixed to such products in the territory defined in Paragraph II:2 for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows:

The entire State of Maine

The city of Brattleboro only in State of Vermont

The following counties in State of Massachusetts:

Norfolk, Essex, Suffolk, Middlesex, Bristol, Plymouth, Barnstable, Dukes, Nantucket.

The entire State of New Hampshire.

II:3. The term of this contract shall be for three (3) years, beginning May 1, 1946 and ending April 30, 1949, unless sooner terminated by the agreement of the parties or the provisions of this agreement.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of

specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof together with the new methods and processes shall be furnished by Sealy to the Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the [fol. 1264E] United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products are manufactured in accordance with Sealy specifications and processes of manufacture herein defined; and,

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Li-

censee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit, against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale, or shipment of Sealy products in said territory by any other person, partnership, association, or Corporation, except that Sealy, directly or through a subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided, that Sealy has therefore collected said Ten ($10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manu-

facturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated.

III:8. To permit Licensee upon written request to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:0. To use and expend at least fifty per cent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertisements, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy (a) for salary, office and administrative costs, and (b) for payments to the Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items [fol. 1265E] and when such expenditures shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

IV:1. Licensee covenants and agrees during the term of this agreement to manufacture at Licensee's own expense Sealy products in the designated territory strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply after the expiration of thirty (30) days with any change made by Sealy in the specifications of Sealy products or in the methods or processes of their manufacture; and to sell Sealy products to retail stores in the designated territory.

IV:2. To use exclusively in the manufacture of Sealy products, and for no other purpose, all materials and/or supplies furnished for such purpose whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain adequate facilities for the manufacture of all Sealy mattresses exclusive of Crestline mattresses in the designated territory; and to maintain an adequate selling force for the sale of such Sealy products as are manufactured by the Licensee in constant and continuous effort in said designated territory.

Sealy's Board of Directors shall have the sole right to determine the adequacy of Licensee's manufacturing facilities, whether Licensee should manufacture all Sealy mattresses exclusive of Crestline mattresses, and the adequacy of Licensee's efforts to sell Sealy products manufactured by Licensee. Failure of Licensee to maintain adequate manufacturing facilities for the manufacture of Sealy mattresses (not including Crestline mattresses) or to manufacture all Sealy mattresses exclusive of Crestline mattresses if required by Sealy's Board of Directors, or to properly and vigorously push the sale of Sealy products manufactured by Licensee, shall be deemed a violation of this contract, and Sealy shall have the right to terminate same by written notice addressed to Licensee at its last known place of business.

Licensee shall not manufacture, sell or deliver within the territory allocated to Licensee any products competitive to Sealy which bear labels, trademarks, tradenames, slogans of any nationally advertised competitor of Sealy; and Licensee shall not sell or deliver Sealy products outside of Licensee's exclusive territory; and Licensee shall not sell or deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of said Licensee's exclusive territory; and Licensee shall not sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:4. To advertise Sealy products by means embodying Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by

Sealy, to forthwith discontinue any advertising or form or advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy, not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy or make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed [fol. 1266E] that Licensee shall not use the Sealy name, prestige, nor the fact that party of the second part is a Sealy Licensee except in the territory covered by this contract; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract and shall give Sealy the right to terminate this contract and License.

IV:5. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure the product's uniformity and the Licensee's conformity with Sealy's specifications, processes, and methods of manufacture and sale by Licensee; and, in order to better enable Sealy to exercise such supervision and control, to furnish Sealy specimens of manufactured products, samples of materials used in the manufacture, and to afford representatives of Sealy access, at reasonable hours, to its plant, warehouse,

and records appertaining to the manufacture and sale of Sealy products.

IV:6. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection copy or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products manufactured and sold by Licensee during the preceding month.

IV:7. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:8. To obtain Sealy's labels in the following and in no other manner:

> Licensee shall send to Sealy a duly executed order for the kind of labels desired. Sealy will then promptly transmit the order to the label manufacturer or distributor selected by Sealy for fulfillment. Licensee will pay to the label manufacturer or distributor the costs of the labels according to the terms of the invoice.

IV:9. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will upon the expiration of this contract, either according to its term or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:10. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:11. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale: and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this license.

IV:12. To perform in good faith each and every covenant of this agreement.

[fol. 1267E]

V

Royalty and Charges to be Paid by Licensee under This Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products in accordance with Sealy specifications and Sealy methods and processes, and to use Sealy trademarks, tradenames, and slogans, Licensee shall pay to Sealy on the 15th day of each succeeding month 3% of all of Licensee's gross sales, whether such sales are of Sealy products or other like products which Licensee manufactures, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or Political subdivision thereof, it being stipulated that such royalty or percentage on gross sales shall be not less than the sum of $ per month.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and

welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished by Sealy or Sealy's sources of supply upon terms stipulated by Sealy. Should there be any excess of such materials on purchases by Sealy, such excess may be pro-rated by Sealy among the Sealy Licensees based upon the area served by their respective plants and in accordance with the proportion that the Licensee's volume of Sealy business bears to the total volume of Sealy business of all Licensees.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and 00/100 Dollars for each Sealy product manufactured, sold, or delivered by it outside of the territory allocated to Licensee under this contract; and Licensee further agrees to pay to Sealy on demand the sum of Ten ($10.00) and 00/100 Dollars for each Sealy product sold if Licensee knows or should know that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and further, Licensee agrees to pay Ten ($10.00) and 00/100 Dollars for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent; and further, Licensee agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by it to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that inferior materials or workmanship were used; and this covenant shall be of full force and effect regardless of the termination of other covenants of this contract.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of

Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form or relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall be terminated and at an end.

[fol. 1268E] VI:3. a. That if either party defaults in the performance or violates any provision of this contract, unless otherwise provided, the other must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect; and if not so remedied this contract shall be at an end upon the expiration of such thirty (30) day period.

VI:3. b. Should Licensee fail or refuse within the time provided in Paragraph VI:3 (a) to remedy any default or violation and thus cause a termination of this contract, then Licensee agrees to pay to Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve months next preceding the date of the termination of this contract.

VI:4. Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI:5. After the termination of this contract for any reason Licensee agrees that he will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI:6. Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation, unless the Licensee shall have remedied such breach or violation within thirty (30) days from the date of notice from Sealy.

VI:7. This contract may not be assigned, nor any rights thereunder transferred, in any manner, by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation and the majority or controlling stock therein is sold to any person, firm, or corporation.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI:9. Sealy shall not be liable to any person, firm, or corporation, for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for or to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Where ever the term "Sealy Board of Directors" is used, such term shall be deemed to include the Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its Offices in Chicago, Illinois.

[fol. 1269E] XI

Licensee may, at its option, renew this contract for an additional period of three (3) years from the expiration date of the aforesaid contract, upon the terms and conditions then to be agreed upon with Sealy.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, this, the day and year first above written.

Sealy, Incorporated, (Seal), by: Jacob R. Haas, President.

Attest:

H. B. Fouts, Secretary.

Eagle Mattress Co., Inc., (Seal), by: Samuel Wiener, President.

Attest:

Lillian Feldman, Secretary.

[fol. 1270E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1031

This is an amendment to the License Agreement dated the — day of October, 1947, between Sealy, Incorporated, a Delaware corporation, herein called "Sealy", and Sealy Mattress Co. of Kansas City, Inc. (a corporation) is herewith entered into between Sealy, Incorporated, hereinafter called "Sealy" and Sealy Mattress Co. of Kansas City, Inc., hereinafter called the "Licensee", this—day of October, 1947, becoming a part of the License Agreement, hereinbefore referred to, the consideration being the payment by each of the parties to the other the sum of One ($1.00) Dollar and other valuable considerations, the receipt whereof is hereby acknowledged, and provides:

1

Licensee, or — and — its stockholders, have heretofore purchased none shares of the capital stock of Sealy, Incorporated, at $ per share, and Licensee, or — and — , its stockholders, are now the owners of said shares of capital stock.

2

Licensee is about to purchase from Sealy, Incorporated, eight shares of its capital stock at and for the sum of $105.00 per share.

3

As a part of the consideration for the purchase of said shares of stock set forth in Paragraph (2) next above, Licensee agrees with Sealy that upon the termination of the License held by Licensee, Sealy shall have the right and option to purchase all of the shares of the capital stock of Sealy, Incorporated owned by Licensee and/or any of its stockholders, in accordance with the following formula:

(a) If the License or any extension thereof shall expire, and Licensee at the date of expiration shall not be in default in the performance of any of the provisions of the License Agreement, Sealy shall within thirty (30) days from the date of expiration of the License or any

extension thereof, pay for said shares the purchase price paid therefor by Licensee and/or its stockholders, and if Licensee and/or its stockholders at such time have a bonafide offer to sell the shares of stock at more than such original price paid therefor by Licensee and/or its stockholders, and shall exhibit to Sealy satisfactory evidence of such offer, Sealy must within thirty (30) days exercise its right and option to purchase such shares at the price offered Licensee and/or its stockholders; and if [fol. 1271E] Sealy fails to exercise such option and right to purchase within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

(b) In the event the License Agreement between Sealy and Licensee is terminated by Sealy by reason of a failure or default by Licensee to perform promptly the covenants to be by the Licensee performed, then Sealy shall pay for such shares the price paid therefor by Licensee and/or its stockholders less any sums that may be due Sealy by reason of the failure or default of the Licensee to perform the covenants of the License Agreement within thirty (30) days from the date when said License is terminated; and in the event Sealy shall fail to exercise its right and option to purchase the shares under the terms of this paragraph and make the payment due thereunder within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

4

Licensee and/or its stockholders shall not, at any time, sell any of the shares of the capital stock of Sealy, Incorporated owned by it or its stockholders without first notifying and furnishing to Sealy complete evidence of the offer or offers which it or its stockholders have received and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty (30) days from the date of such notice to purchase the shares of capital stock of Sealy, Incorporated on the same terms as those contained in the offer which Licensee and/or its stockholders have received.

5

Any sale or transfer of said shares by Licensee and/or its stockholders contrary to the terms hereinbefore set forth shall be null and void, and Sealy shall have the right to refuse the transfer of such shares on its books in the event the terms of the foregoing agreement have not been complied with by Licensee and/or its stockholders.

6

The certificates for the shares of the capital stock of Sealy, Incorporated now held by Licensee and/or its stockholders, and the certificates hereafter issued by Sealy, Incorporated shall have the following clause imprinted thereon: "Subject to the provisions of the License Agreement and any amendment thereto between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, Inc. [fol.1272E] Licensee, and the holder of this certificate and any transferee thereof shall be bound thereby".

In Witness Whereof, Sealy, Incorporated and Sealy Mattress Co. of Kansas City Licensee, the parties acting through their duly authorized officers, have hereunto executed this amendment to the Licensee Agreement hereinbefore referred to.

Sealy, Incorporated, (Seal.), by [Copy illegible.]

Sealy Mattress Co. of Kansas City, Inc., by C. B. Kaplan, Licensee Sec.

The undersigned stockholders of Sealy Mattress Co. of Kansas City, Inc. the Licensee, have read the provisions of this amendment to the License Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City the Licensee, dated the 15 day of October, 1947, and herewith signify their acceptance of the provisions of this amendment to the License Agreement and agree to be bound thereby.

Edwin J. Canter, Isadore Gale, Joseph Hartman, Stockholders of Sealy Mattress Co. of Kansas City, Inc.

[fol. 1273E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1051

This Agreement, Made and entered into this, the 27 day of September, 1948, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Sanitary Bedding Company a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Saralee (Mrs. Bernard) Kegan, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

[fol. 1274E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only to use Sealy patents,

trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows: Entire State of Minnesota; entire State of North Dakota; following counties in State of Wisconsin—Douglas, Washburn, Burnette, Polk, Barron, Dunn, St. Croix, Pierce, Pepin, Buffalo; following counties in the State of South Dakota—Roberts, Marshall, Brown, McPherson, Campbell, Corson, Ziebach, Dewey, Walworth, Edmunds, Spink, Day, Grant, Deuel, Codington, Hamlin, Clark, Faulk, Potter, Armstrong,

Sully, Hyde, Hand, Beadle Kingsbury, Brookings, Moody, Lake, Miner, Sanborn, Jerauld, Buffalo, Hughes, Lyman, Stanley, Jones, Jackson, Haakon.

II:3. The term of this contract shall be for three (3) years beginning the 1st day of January 1949 and ending the 31 day of December 1951, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during such period deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then Licensee shall be entitled to one renewal of this License Agreement for a period of five (5) years from the date of its expiration, Sealy reserving the right to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b). Notice of the exercise of the right of renewal shall be given by Licensee to Sealy at least six (6) months prior to the expiration date of this Contract.

II:5. If Licensee shall well and truly perform during the full period of this contract and/or the first renewal thereof for five (5) years each and every covenant of this Contract and of the renewal contract, time being of [fol. 1275E] the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract or the first renewal thereof deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then the first renewal of this License shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this Agreement and of the first renewal thereof, Sealy reserving the right at the beginning of each five (5) year period after the expiration of the first renewal of this License to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore

provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a). That the said Sealy products are manufactured in accordance with Sealy specifications and process of manufacture herein defined; and,

(b). As conditions precedent for such protection Licensee shall give notice:

(1). By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement agianst Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy [fol. 1276E] products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2). In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted,

the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten ($10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of

advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1277E] IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraph III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a). Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b). Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and,

(c). Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and so authorized to discontinue said form of advertising immediately upon request of Sealy or its President, not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it

being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party [fol. 1278E] of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract, and shall give Sealy the right to terminate this contract and license.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on

Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

[fol. 1279E] IV:16. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage,

injure, deteriorate, or otherwise harmful affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:5. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a). During the term of this contract in monthly installments on the 15th day of each succeeding month three (3) percent of all of Licensee's gross sales made during

the preceding month up to One Million ($1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1949, have equalled One Million ($1,000,000.00) and 00/100 Dollars, then two (2) percent of such gross sales from One Million ($1,000,000.00) and 00/100 Dollars to Two Million ($2,000,000.00) and 00/100 Dollars, then one (1) percent of such sales from Two Million ($2,000,000.00) and 00/100 Dollars to Three Million ($3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1949, have reached Three Million ($3,000,000.00) and 00/100 Dollars, then two (2) percent on all sales above Three Million ($3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1949, and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of $400.00 (Four hundred dollars) per month.

[fol. 1280E] It is further stipulated:

(a). That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 27 day of September, 1948, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products."

(b). The term "New Sealy Products" shall mean products other than the following: mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered.

(c). "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(d). The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory;

and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

[fol. 1281E]

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy must give thirty (30) days' notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this contract.

VI:3(c). Should Licensor default in the performance or violate any provision of this contract, Licensee must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum

equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater. [fol. 1282E] VI:5. After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI:6. Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for

unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

[fol. 1283E] In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), by: E. H. Bergmann, President.

Attest:

R. G. Culp, Secretary.

Sanitary Bedding Company, (Seal), by: Jim S. Ruby, President.

Attest:

Lucile Eastman, Secretary.

[fol. 1284E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1061

This Agreement, Made and entered into this, the 1st day of July, 1950, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and U. S. Bedding Company, Memphis, Tennessee a corporation of Georgia, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

[fol. 1285E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only to use Sealy

patents, trademarks, tradenames, copyrights, slogans, methods, processes and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows:

The entire State of Oklahoma.

The northern part of Texas beginning at a line drawn westerly from Dacha to Nacogdoches to Palestine, then to Mexia, then southwesterly to Marlin, south to Rockdale, then westerly to Lampasas, to Goldthwaite, to Richland Springs, to Mason, to Rock Springs, to Pandale, to Valentine, then in a straight line to the Mexico border. All of the State of Texas north of this line is included in this

territory. The towns mentioned above are not included in the territory.

II:3. The term of this contract shall be for five (5) years beginning the 1st day of July, 1950 and ending the 30th day of June, 1965, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform during the full period of this contract each and every covenant of this Contract, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then this License shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this agreement, Sealy reserving the right at the beginning of each five (5) year period after the expiration of the first renewal of this License to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

[fol. 1286E]

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Li-

censee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods, and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense and to indemnify Licensee in any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a). That the said Sealy products are manufactured in accordance with Sealy specifications and process of manufacture herein defined; and,

(b). That Sealy in no way be liable for indemnity or judgements unless the liability against the Licensee shall have been determined in a court of last resort after actual trial.

(c). As conditions precedent for such protection Licensee shall give notice:

(1). By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the [fol. 1287E] manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2). In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part hereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages

Ten ($10.00) and 00/100 Dollars for each Sealy product sold or shipped by Seally into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten ($10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1288E] IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory strict-

ly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraph III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a). Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bears labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b). Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and,

(c). Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized to discontinue said form of advertising immediately upon request of Sealy or its President, not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the [fol. 1289E] party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract, and shall give Sealy the right to terminate this contract and license.

IV:6. To permit Sealy to exercise supervision and

control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

[fol. 1290E] IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products

of Sealy manufactured under such processes, or merchandised, advertised or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding by two-thirds majority vote that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effects upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogan, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a). During the term of this contract in monthly installments on the 15th day of each succeeding month three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million ($1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1950

have equalled One Million ($1,000,000.00) and 00/100 Dollars, then two (2) percent of such gross sales from One Million ($1,000,000.00) and 00/100 Dollars to Two Million ($2,000,000.00) and 00/100 Dollars, then one (1) percent of such sales from Two Million ($2,000,000.00) and 00/100 Dollars to Three Million ($3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1950 have reached Three Million ($3,000,000.00) and 00/100 Dollars, then two (2) percent on all sales above Three Million ($3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1950 and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of Four Hundred ($400.00) and no/100 Dollars per month.

[fol. 1291E] It is further stipulated:

(a). That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of July, 1950, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(b). The term "New Sealy Products" shall mean products other than the following: mattresses including en-

sembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items; bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered.

(c). "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(d). The term "bonafide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of suply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory;

and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

[fol. 1292E] Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this contract.

VI:3(c). Should Licensor default in the performance or violate any provision of this contract, Licensee must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for

a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater. [fol. 1293E] VI:5(a) After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

(b) If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy shall in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6 Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7 This contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons

other than those holding such voting control therein as of the date of this contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8 That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI:9 Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

[fol. 1294E] IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), by: E. H. Bergmann, President.

Attest:

W. J. Haig, Asst. Secretary.

U. S. Bedding Co., (Seal), by: Louis G. Haas, President.

Attest:

Aaron T. Hod, Secretary.

[fol. 1295E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1064

This Agreement, made and entered into this, the 1st day of October, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and David Manufacturing Company, a corporation of the State of Missouri, with principle office at Kansas City, Missouri, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and developes additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable con-

sideration, the receipt of which is hereby acknowledged, It is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1296E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite', "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is-like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trade-

mark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manu- [fol. 1297E] facture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the secon.. part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Kansas—Entire state

Missouri—Following counties:

Andrew	DeKalb	Moniteau
Atchison	Douglas	Morgan
Barry	Gentry	Newton
Barton	Greene	Nodaway
Bates	Grundy	Ozark
Benton	Harrison	Pettis
Buchanan	Henry	Platte
Caldwell	Hickory	Polk
Camden	Holt	Putnam
Carroll	Howard	Ray
Cass	Jackson	St. Clair
Cedar	Jasper	Saline
Chariton	Johnson	Stone
Christian	LaClede	Sullivan
Clay	Lafayette	Taney
Clinton	Lawrence	Vernon
Cooper	Linn	Webster
Dade	Livingston	Worth
Dallas	McDonald	Wright
Daviess	Mercer	

[fol. 1298E] II:3. The term of this contract shall be for 3 years and 3 months beginning the 1st day of October, 1952, and ending the 31st day of December, 1955, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV:3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, to a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract and/or the any renewal thereof, each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5) year period after the expiration of the first renewal of this license, to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

[fol. 1299E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1300E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2)

days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the [fol. 1301E] territory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has therefore collected said Ten ($10.00) and No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market

Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

License's Covenants and Agreements.

Licensee covenants and agrees:

[fol. 1302E] IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and other subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that [fol. 1303E] the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of

Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and [fol. 1301E] uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an addi-

tional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy there- [fol. 1305E] for the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the termination of this contract or any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other

right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or [fol. 1306E] adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harm-

ful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each succeeding month, three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million ($1,000,000.00) and No/100 Dollars:

(b) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled One Million ($1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million ($1,000,000.00) and No/100 Dollars to Two Million ($2,000,000.00) and No/100 Dollars:

(c) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled Two Million ($2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million ($2,000,000.00) and No/100 Dollars to Three Million ($3,000,000.00) and No/100 Dollars;

[fol. 1307E] (d) When the aggregate of such monthly sales in any one year beginning January 1st, 1952, have reached Three Million ($3,000,000.00) and No/100 Dol-

lars, then two (2) percent of such gross sales each month above Three Million ($3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth (1/12) of 3% of:

(1) 70% of the sales par of Licensee for the calendar year 1952, during the year 1953;

(2) 80% of the sales par of Licensee for the calendar year 1953, during the year 1954;

(3) 90% of the sales par of Licensee for the year 1954, during the year 1955;

(4) After the third year, 90% of the sales par of Licensee for the preceding year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be $413,226.00. Notice of the sales par for each year after 1951 and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to January 1st of each year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy products [fol. 1308E] to bona fide jobbers and mail order houses

approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of October, 1952, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, returns, allowances, and freight allowed customers.

(k) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within [fol. 1309E] thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1310E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contrac. by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds (⅔) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written

notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (⅔) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (⅔) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated dam- [fol. 1311E] ages for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during

the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, License agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes [fol. 1312E] in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy; Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI;7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided

that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

[fol. 1313E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann, President.

Attest:

J. D. Sommen, V.P.

David Manufacturing Company, By: Inedon Gale, President.

Attest:

Chester B. Kaplan, Secretary.

[fol. 1314E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1065

This Agreement, made and entered into this, the 1st day of November, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Peerless Mattress Company, Inc., a corporation of North Carolina, with principal offices in Lexington, N. C., hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consid-

eration, the receipt of which is hereby acknowledged, It is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1315E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use

such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture [fol. 1316E] and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

State of South Carolina—Entire State.

State of North Carolina—Following counties:

Anson	Mecklenburg	Craven
Bladen	Mitchell	Davidson
Brunswick	Montgomery	Davie
Buncombe	Moore	Duplin
Cabarus	New Hanover	Durham
Cherokee	Pender	Forsyth
Clay	Polk	Franklin
Cleveland	Richmond	Granville
Columbus	Robeson	Greene
Cumberland	Rowan	Guilford
Gaston	Rutherford	Iredele
Graham	Sampson	Johnston
Harnett	Scotland	Jones
Haywood	Stanly	Lenoir
Henderson	Swain	Onslow
Hoke	Transylvania	Orange
Jackson	Union	Person
Lee	Yancey	Randolph
Lincoln	Almance	Wake
McDowell	Carteret	Wayne
Macon	Caswell	Wilson
Madison	Chatham	

[fol. 1317E] II:3. The term of this contract shall be for 3 years and 2 months beginning the 1st day of November, 1952, and ending the 31st day of December, 1955, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV:3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, to a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of

this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract [* * *] each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5) year period beginning Jan. 1, 1961, which is designated as the anniv. date of this C(ontract)", to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

[fol. 1318E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form perscribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time

beyond the thirty (30) day period, hereinafter provided, within which to dispose of inventories rendered obsolete by change in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by License must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1319E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licenseee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have bee nfinally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is leagally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the terri-[fol. 1320E] tory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and no/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and no/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has there-

tofore collected said Ten ($10.00) and no/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50 percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1321E] IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods

or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majoriy vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that [fol. 1322] the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and [fol. 1323E] uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manu-

facturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy there- [fol. 1324E] for the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee

has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee wlil, upon the termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affects the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or

[fol. 1325E] adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each succeeding month, three (3) percent of all of Licensee's gross sales of Sealy products only made during the preceding month up to One Million ($1,000,000.00) and No/100 Dollars:

(b) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have equalled One Million ($1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million ($1,000,000.00) and No/100 Dollars to Two Million ($2,000,000.00) and No/100 Dollars:

(c) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have equalled Two Million ($2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million ($2,000,000.00) and No/100 Dollars to Three Million ($3,000,000.00) and No/100 Dollars;

[fol. 1326E] (d) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have reached Three Million ($3,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month above Three Million ($3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth (1/12) of 3% of:

(1) 70% of the sales par of Licensee for the calendar year 1951, during the year 1952;

(2) 80% of the sales par of Licensee for the calendar year 1952, during the year 1953;

(3) 90% of the sales par of Licensee for the year 1953, during the year 1954;

(4) After the year 1954, 90% of the sales par of Licensee for the preceding year.

In addition to the above royalties payable on Sealy products, Licensee shall also pay royalties in monthly installments on products of Licensee other than Sealy products as follows:

(1) During the year 1953, nothing;

(2) During the year 1954, ½ of 1% of the sales of such products;

(3) During the year 1955, 1% of the sales of such products;

(4) In the event of a renewal of this contract under the provisions of paragraph II (4), then during the year 1956, 1½% of such sales; and then each year thereafter the percentage payable upon the sales of such other products shall increase ½ of 1% until the royalties on

such other products equals 3%; thereafter, such royalties on other products shall also be 3% of such sales.

(5) When the royalties payable by Licensee on all of its products (that is, as provided in sub-paragraphs (a), (b), (c) and (d) for Sealy products; and (e) for non-Sealy products) under this contract or any renewal thereof is 3%, and in no event later than January 1, 1959, then such monthly royalty or percentage of sales shall not be less than 1/12 of 3% of 90% of the sales par of Licensee for the year 1958, and thereafter such monthly royalty shall not be less than 1/12 of 3% of 90% of the sales par of Licensee for the preceding year.

(6) Nothing contained herein shall be deemed to give Licensee any right to a renewal except such right as is contained in paragraphs II (4) and II (5) of this contract, in which event the provisions of this paragraph V.

(e)(4) and (5) shall apply on products other than Sealy products.

[fol. 1327E] For the purposes of this section "sales par" is to be determined in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be $600,000.00. Notice of the sales par for each year after it becomes applicable and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to the beginning of the calendar year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall not be paid upon sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Government Agency or the Agency of any State or political subdivision thereof.

[fol. 1328E] (h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of November, 1952, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, return, allowances, and freight allowed customers.

(k) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail

store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty [Vol. 1329E] (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1330E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to termi-

nate this Contract by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds (⅔) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (⅔) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (⅔) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages [fol. 1331E] for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end

at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the same "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes [fol. 1332E] in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of

the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, for any misrepresentations made by Licensee.

[fol. 1333E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann, President.

Attest:

J. R. Sommer, V. P.

Peerless Mattress Company, Inc., By: Mrs. J. V. Moffitt, Sr., President.

Attest:

Jack V. Moffit, Secretary.

[fol. 1334E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1074

This Agreement, made and entered into this, the 15th day of May, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Sanitary Bedding Company a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan, Rebecca R. Lichter hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1335E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", Sunspun", 'Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully

described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manu-[fol. 1336E] facture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Entire State of Minnesota. Entire State of North Dakota. Following counties in Wisconsin: Barron, Buffalo, Burnett, Douglas, Dunn, Pepin, Pierce, Polk, Saint Croix, Washburn. Following counties in South Dakota:

Aurora, Beadle, Bennett, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Corson, Davison, Day, Deuel, Dewey, Edmunds, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Hughes, Hyde, Jackson Jerauld, Jones, Kingsbury, Lake, Lyman, McCook, McPherson, Marshall, Mellette, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Armstrong, Stanley, Todd, Tripp, Walworth, Washabaugh, Ziebach.

[fol. 1337E] II:3. The term of this contract shall be for 5 years beginning the 1st day of January, 1952, and ending the 31st day of December, 1956, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV:3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, by a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract and/or the any renewal thereof, each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5)

year period after the expiration of the first renewal of this license, to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agree while this contract is in full force and effect:

[fol. 1338E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its

Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensees' use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1339E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it

without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the terri- [fol. 1340E] tory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten ($10.00) and No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:9. To use and expend at least fifty (50) percent use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other ad-

vertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1341E] IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for

the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to [fol. 1342E] believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection

with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and uniformity [fol. 1343E] in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's

exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy therefor [fol. 1344E] the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make

no disclosure, except to its own employees using the name, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or adverse [fol. 1345E] effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each sueceeding month, three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million ($1,000,000.00) and No/100 Dollars;

(b) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled One Million ($1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million ($1,000,000.00) and No/100 Dollars to Two Million ($2,000,000.00) and No/100 Dollars:

(c) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled Two Million ($2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million ($2,000,000.00) and No/100 Dollars to Three Million ($3,000,000.00) and No/100 Dollars;

[fol. 1346E] (d) When the aggregate of such monthly sales in any one year beginning January 1st, 1952, have reached Three Million ($3,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month above Three Million ($3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth (1/12) of 3% of:

(1) 70% of the sales par of Licensee for the calendar year 1951, during the first year of this contract;

(2) 80% of the sales par of Licensee for the calendar year 1952, during the second year of this contract;

(3) 90% of the sales par of Licensee for the year 1953, during the third year of this contract;

(4) After the third year, 90% of the sales par of Licensee for the preceding year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be $480,616.00. Notice of the sales par for each year after 1951 and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to August 15th of each year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy prod- [fol. 1347E] ucts to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which

Sealy has not issued specifications and processes at the time this Licensee Agreement dated the 15th day of May, 1952, is made, but of thereafter and during the term of this License Agrement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, returns, allowances and freight allowed customers.

(k) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee

[fol. 1348E] within thirty (30) days from the date when furnished it is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.) and No/100 Dollars per annum, and such items so shipped shall be paid for Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties.

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1349E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States, or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contract by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds

(2/3) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (2/3) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (2/3) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages [fol. 1350E] for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum

equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, [fol. 1351E] or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided that there shall

be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

[fol. 1352E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann, President.

Attest:

R. G. Culp, Secretary.

Sanitary Bedding Company, By: Ron L. Romberg, Partner.

Attest:

Bernard M. S. Kegan, Partner.

[fol. 1353E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1085

This Agreement, Made and entered into this, the 28 day of September, 1948, by and between Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", party of the first part, and Schmitt & Henry Manufacturing Company, an Iowa corporation, one of whose tradenames is Sealy Mattress Company, of Des Moines, Iowa, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and, from time to time, does originate and develop patents, secret methods processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee has heretofore held a License to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans; and

Whereas, Sealy and Licensee deem it in their best interests that party of the second part continue as Licensee of party of the first part;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as here-

inafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manfactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Supspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow For The Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan, shall become the property of Sealy.

[fol. 1354E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the

covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, and for such purpose only to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I.5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy Products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

I:7. "Contract" or "Agreement" means first renewal of original License Contract.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this Agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels; and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is, as follows: Entire State of Iowa. All counties in Eastern Nebraska—west to and including the following counties; Keyapaha, Brown, Blaine, Custer, Dawson, Gosper, Furnas. Following counties in State of South Dakota; Union, Clay, Yankton, Bon Homme, Charles Mix, Douglas, Gregory, Tripp, Mellette, Todd, Bennet, Washa-

baugh, Brule, Aurora, Davison, Hanson, McCook, Minnehaha, Hutchinson, Turner, Lincoln.

II:3. The term of this Contract shall be for five (5) years beginning the 2 day of January 1948, and ending the 1 day of January 1953, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform during the full period of this Contract for five (5) years each and every covenant of this Contract, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then this Contract shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this Contract, Sealy reserving the right at the beginning of each five (5) year period after the expiration of this Contract to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) per cent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

[fol. 1355E] III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which

to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products are manufactured in accordance with Sealy specifications and processes of manufacture herein defined; and,

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to for-

ward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

[fol. 1356E] III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten ($10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this

provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) per cent. of the amount paid it as royalties under Paragraph V:1 of this Contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee convenants and agrees:

IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy product's in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver with Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans, of any nationally advertised competitor of Sealy;

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, not sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

[fol. 1357E] IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold

by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this Contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this Contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this Contract, and shall give Sealy the right to terminate this Contract and License.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineers shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation to be paid

for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products in like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all Sealy and like products manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this Contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this Contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this Contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of this Contract.

[fol. 1358E] IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid

and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandise, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regula-

tions not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid By Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

V:1(a) During the term of this Contract in monthly installments on the 15th day of each succeeding month three (3) per cent. of all of Licensee's gross sales made during the preceding month up to One Million ($1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1948, have equalled One Million ($1,000,000.00) and 00/100 Dollars, then two (2) per cent. of such gross sales from One Million ($1,000,000.00) and 00/100 Dollars to Two Million ($2,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1948, equal Two Million ($2,000,000.00) and 00/100 Dollars, then one (1) per cent. of such sales from Two Million ($2,000,000.00) and 00/100 Dollars to Three Million ($3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1948, have reached Three Million ($3,000,000.00) and 00/100 Dollar, then two (2) per cent. on all sales above Three Million ($3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1948, and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Govern-

mental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of Four Hundred ($400.00) Dollars per month.

[fol. 1359E] It is further stipulated:

(a) That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 28 day of September, 1948, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(b) The term "New Sealy Products" shall mean products other than the following: mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered.

(c) "Gross Sales" do not include P.M's, returns, allowances, and freight allowed customers.

(d) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this Contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this Contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

[fol. 1360E] VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this Contract shall terminate and be at an end.

VI:3(a) Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this contract, Sealy must give thirty (30) days' written notice of its intention to terminate this Contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this Contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this Contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b) Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy

to declare this Contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this Contract.

VI:3(c) Should Licensor default in the performance or violate any provision of this Contract, Licensee must give thirty (30) days' written notice of its intention to terminate this Contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this Contract shall again be of full force and effect, and if not so remedied, then this Contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a) Licensee may voluntarily terminate this Contract after giving Sealy two (2) months' notice of its intention so to terminate, and the Contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this Contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b) In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this Contract, whichever is greater.

VI:5. After the termination of this Contract for any reason, Licensee agrees that it will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI:6. Failure of Sealy to notify Licensee of any breach or violation of this Contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this Contract at a later date because of such breach or violation.

VI:7. This Contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this Contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

[fol. 1361E] VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this Contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation, for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this Contract shall be in writing.

VIII

This Contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this Contract, the term "Sealy's Board of Directors" shall be deemed to in-

clude the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its offices in Chicago, Illinois.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann, President.

Attest:

W. J. Craig, Asst. Secretary.

Schmitt & Henry Manufacturing Company, (Seal), By: H. B. Fouts, President.

Attest:

T. H. Mitchell, Secretary.

[fol. 1362E] File with Contract

This is an amendment to the License Agreement dated the 2 day of January, 1942, between Sealy, Incorporated, a Delaware corporation, therein called "Sealy," and Schmitt & Henry Mfg. Co. (a corporation) therein called the "Licensee," and is herewith entered into between Sealy, Incorporated, hereinafter called "Sealy," and Schmitt & Henry Mfg. Co. hereinafter called the "Licensee," this 28 day of October, 1947, becoming a part of the License Agreement, hereinbefore referred to, the consideration being the payment by each of the parties to the other the sum of One ($1.00) Dollar and other valuable consideration, the receipt whereof is hereby acknowledged, and provides:

1

Licensee, or Schmitt & Henry Mfg. Co. and , its stockholders, have heretofore purchased 20 shares of the capital stock of Sealy, Incorporated, at $100 per share, and Licensee, or Schmitt & Henry Mfg. Co. and , its stockholders, are now the owners of said shares of capital stock.

2

Licensee is about to purchase from Sealy, Incorporated, 8 shares of its capital stock at and for the sum of $105.00 per share.

3

As a part of the consideration for the purchase of said shares of stock set forth in Paragraph (2) next above, Licensee agrees with Sealy that upon the termination of the License held by Licensee, Sealy shall have the right and option to purchase all of the shares of the capital stock of Sealy, Incorporated, owned by Licensee and/or any of its stockholders, in accordance with the following formula:

(a) If the License or any extension thereof shall expire, and Licensee at the date of expiration shall not be in default in the performance of any of the provisions of the License Agreement, Sealy shall within thirty (30) days from the date of expiration of the License or any extension

thereof pay for said shares the purchase price paid therefor by Licensee and/or its stockholders, and if Licensee and/or its stockholders at such time have a bona fide offer to sell the shares of stock at more than such original price paid therefor by Licensee and/or its stockholders, and shall exhibit to Sealy satisfactory evidence of such offer, Sealy must within thirty (30) days exercise its right and option to purchase such shares at the price offered Licensee and/or its stockholders; and if Sealy fails to exercise such option and right to purchase within thirty (30) days, then Licensee [fol. 1363E] and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

(b) In the event the License Agreement between Sealy and Licensee is terminated by reason of a failure or default by Licensee to perform promptly the covenants to be by the Licensee performed, then Sealy shall pay for such shares the price paid therefor by Licensee and/or its stockholders less any sums that may be due Sealy by reason of the failure or default of Licensee to perform the covenants of the License Agreement within thirty (30) days from the date when said License is terminated; and in the event Sealy shall fail to exercise its right and option to purchase the shares under the terms of this paragraph and make the payment due thereunder within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

4

Licensee and/or its stockholders shall not, at any time, sell any of the shares of the capital stock of Sealy, Incorporated owned by it or its stockholders without first notifying and furnishing to Sealy complete evidence of the offer or offers which it or its stockholders have received and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty (30) days from the date of such notice to purchase the shares of capital stock of Sealy, Incorporated on the same terms as those contained in the offer which Licensee and/or its stockholders have received.

5

Any sale or transfer of said shares by Licensee and/or its stockholders contrary to the terms hereinbefore set forth shall be null and void, and Sealy shall have the right to refuse the transfer of such shares on its books in the event the terms of the foregoing agreement have not been complied with by Licensee and/or its stockholders.

6

The certificates for the shares of the capital stock of Sealy, Incorporated now held by Licensee and/or its stockholders, and the certificates hereafter issued by Sealy, Incorporated shall have the following clause imprinted thereon: "Subject to the provisions of the License Agreement and any amendment thereto between Sealy, Incorporated and Schmitt & Henry Mfg. Co., Licensee, and the holder of this certificate and any tranferee thereof shall be bound thereby."

[fol. 1364E] In Witness Whereof, Sealy, Incorporated and Schmitt & Henry Mfg. Co., Licensee, the parties acting through their duly authorized officers, have hereunto executed this amendment to the License Agreement hereinbefore referred to.

Sealy, Incorporated, (Seal). By: ——, ——.

Schmitt & Henry Mfg. Co., Licensee. By H. B. Fouts, Pres.

The undersigned stockholders of Schmitt & Henry Mfg. Co., the Licensee, have read the provisions of this amendment to the License Agreement between Sealy, Incorporated and Schmitt & Henry Mfg. Co., the Licensee, dated the 28 day of October, 1947, and herewith signify their acceptance of the provisions of this amendment to the License Agreement and agree to be bound thereby.

Harry N. Ryden, T. L. Mitchell, T. H. Johnson,
Stockholders of 11/30/47.

[fol. 1365E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1086

This Agreement, made and entered into this, the 1st day of September, 1954, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Brown Reliable Bedding Company, a corporation of Michigan, hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered [fol. 1366E] furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bedsprings, box springs, foundations units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Con. sealy.bed", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter

set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture [fol. 1367E] and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Following counties in the State of Michigan:

Genesee, Hillsdale, Huron, Lepeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Tuscola, Washtenaw, and Wayne.

[fol. 1368E] II:3. This license shall remain in full force and effect so long as the licensee shall continue to well and truly perform each and every covenant made by the licensee

in this agreement, including specifically but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and provided that Sealy shall have the right at the beginning of each five year period, beginning on the 1st day of Sept., 1954 to increase the minimum royalty to be paid by the licensee thereafter by a maximum of 25% of the amount of minimum royalty being paid by the licensee during the next preceding five year period. The anniversary date for each five year period shall be the same day and month as the date of the execution of this contract.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be fur- [fol. 1369E] nished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products there-

after manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

[fol. 1370E] III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy

shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten ($10.00) And No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten ($10.00) And No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten ($10.00) And No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but [fol. 1371E] only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of

the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2, and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufactur of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be

deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for [fol. 1372E] the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4: That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provision of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's ad-

vertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, in-
[fol. 1373E] voices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name; prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its repre-

sentatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

[fol. 1374E] IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy" and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, tradenames, trademarks, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same,

of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

[fol. 1375E] IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

[fol. 1376E]

V

Royalty and Charges To Be Paid by Licensee Under This Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, licensee shall pay to Sealy the following royalty each year, which shall be based upon the sales par (as hereinafter defined) or the actual sales of the licensee, whichever is greater, for the preceding calendar year, and such royalty shall be:

3% of the first $1,000,000.00 of licensee's sales par or actual sales;

2% of the second $1,000,000.00 of licensee's sales par or actual sales;

1% of the third $1,000,000.00 of licensee's sales par or actual sales; and

2% of licensee's sales par or actual sales in excess of $3,000,000.00.

Licensee shall pay the applicable royalty monthly on the actual gross sales for the preceding month. Any deficiency between the amount thus paid by the licensee monthly on actual gross sales and the amount owed by the licensee predicated upon the licensee's sales par shall be paid within thirty (30) days following the end of the calendar year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan for determining sales pars heretofore adopted by Sealy during the year 1953 which for the year 1953 is agreed to be $894,141. Notice of the sales par for each year after 1953 and of the minimum royalty due by licensee thereafter shall be given by Sealy to licensee at least forty (40) days prior to the 1st day of July of each year.

(a) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness

that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(b) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy products to bona [fol. 1377E] fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(c) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of September, 1954, is made, but of thereafter and during the term of this Licensee Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(d) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the mannufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(e) "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(f) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured products to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the [fol. 1378E] Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty ($450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten ($10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or

workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1379E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3. (a) Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contract by reason of such violation or default; and Licensee

shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds (2/3) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (2/3) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (2/3) majority of Sealy's Board of Directors.

VI:3. (b) Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3 (a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date [fol. 1380E] of the termination of this contract.

VI:3. (c) Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4. (a) Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4. (b) In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for

a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5. (a) After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5. (b) If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated dam-
[fol. 1381E] ages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1 (a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control there-

in as of the date of this contract, provided that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion here- [fol. 1382E] of shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By E. H. Bergmann, President.

Attest:

—— ——, Secretary.

Brown Reliable Bedding Company (Seal), By Peter D. Brown, President.

Attest:

H. King Brown, Secretary.

[fol. 1383E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1107

Interrogatory 7:

"7. State for each year since February 13, 1957 the sources of income of Sealy, Inc. and amount of income from each such source.

Answer to Interrogatory 7:

The following table shows for the last 6 months of 1957, for the year 1958 and for the year 1959 the sources of income of Sealy, Inc. and amount of income from each such source. (Due to Sealy, Inc.'s accounting system no such information is available for the periods February 13, 1957 through June 30, 1957 and January 1, 1960 through June 14, 1960):

[fol. 1384E] Income for the Period 7/1/57-12/31/57

Source		Amount
Royalty		
Licensees	$580,596.94	
Steadley Company	2,547.73	$583,144.67
Volume Rebates		
Miracle Mesh	$ 1,530.22	
Surcharges		
Ticking	60,063.58	
Innerspring Purchases	375.46	
		61,969.26
Merchandising Aids		14,383.88
Administrative Purchases		
Labels	$ 14,675.48	
Rubber Cores	25,772.37	
Buttons	1,145.68	
Belnap & Thompson Sales	2,321.06	
		43,914.59
Administrative Service, Posture Prod., Inc.		5,000.00
Sales of Trademarks & Trade Names to Sealy Sleep Products, Ltd.		2,500.00
Interest Earned		1,954.10
Dividends Received		3,945.07
Miscellaneous Income		236.76
Discounts—Net		95.09
Total Income		$717,143.42

[fol. 1385E] Income for the Period January 1, 1958 through December 31, 1958

Source		Amount
Royalty		
Licensees	$1,214,078.18	
Steadley Company	1,802.07	
		$1,215,880.25
Volume Rebates		
Miracle Mesh	$ 5,799.75	
Surcharges		
Ticking	84,931.57	
Ticking—For Advertising	116,804.41	
		207,535.73
Merchandising Aids		*(21,561.04)
Administrative Purchases		
Belnap & Thompson Sales	815.06	
Bolta Flex Panels	*(1,625.96)	
Buttons	640.57	
Headboards	*(1,084.29)	
Labels	17,771.92	
Rubber Cores	19,664.42	
		36,181.72
Adm. Services, Posture Products, Inc.	7,500.00	
Sale of Trademarks & Trade Names to Sealy Sleep Products, Ltd.	5,000.00	
Interest Earned	3,079.00	
Dividends Received	2,223.00	
Miscellaneous Income	2,639.96	
Discounts—Net	16,468.11	
		36,910.07
Total Income		$1,474,946.73

* Loss.

[fol. 1386E] Income for the Period January 1, 1959 through December 31, 1959

Source		Amount
Royalty		
Licensees	$1,358,634.58	
Steadley Company	3,336.42	
		$1,361,971.00
Special Assessment to Licensees		
A. Godfrey Radio Program		142,068.45
Surcharges		
Ticking	80,513.04	
Ticking—For Advertising	130,354.05	
Rubber Cores—For Advertising	43,135.59	
		254,002.68
Merchandising Aids		11,898.65
Profit from Sale of Bedding-Fontainebleau Cover Partial Costs of Posturepedic Contest		19,333.78
Administrative Purchases		
Belnap & Thompson Sales	212.31	
Bolta Flex Panels	3,410.45	
Buttons	801.31	
Headboards	*(1,677.88)	
Labels	23,915.34	
Rubber Cores	14,378.54	
Decals	162.74	
Upholstery Material	*(1,018.35)	
		40,094.46
Adm. Services—Posture Products, Inc.	7,500.00	
Sale of Trademarks and Trade Names to Sealy Sleep Products Limited	5,000.00	
Interest Earned	3,166.94	
Dividends Received	2,389.74	
Miscellaneous Income	737.40	
Discounts—Net	18,398.74	
		37,192.82
Total income		$1,866,561.84

* Loss.

[fol. 1387E] Interrogatory 8:

"8. State for each year since February 13, 1957 the total dollar sales volume of all Sealy products sold by

(a) all licensees;
(b) each licensee as reported by licensees to Sealy, Inc."

Answer to Interrogatory 8:

The following table shows for each year since 1957 and the first 5 months of 1960 the total dollar sales volume of Sealy products within licensed territories as reported to Sealy, Inc. by each licensee and all licensees:

[fol. 1388E] Reported Total Dollar Sales Volume of Sealy Products in Licensed Territories

Licensee	Year 1957	Year 1958	Year 1959	Through 5/31/60
Eagle Mattress Co., Inc.	$ 1,944,950	$ 1,909,579	$ 2,010,868	$ 764,162
The Maryland Bedding Company	2,994,969	3,149,615	2,836,263	1,046,606
Sealy Mattress Co. of Northern California	1,369,854	1,721,943	1,864,063	676,869
Metcalfe Brothers, Inc.	1,036,756	987,732	1,124,808	374,237
Sealy Mattress Company of Houston	1,371,300	1,329,942	1,588,007	474,095
Sealy Mattress Company of New York City, Inc.	2,222,662	2,183,740	2,212,295	832,507
Fisher Products Company	1,994,175	1,975,943	2,081,377	723,865
Sealy Mattress Company	6,302,343	6,236,383	6,453,858	2,373,211
The Ohio Mattress Co.	5,030,963	4,129,743	4,456,527	1,530,827
Colorado Mattress Manufacturing Company	1,546,419	1,798,297	1,875,701	650,570
Schmitt & Henry Manufacturing Co.	1,004,304	1,212,269	1,019,769	398,595
Brown Reliable Bedding Company	2,369,667	1,795,828	1,737,470	631,345
Sleepcraft, Inc.	1,711,703	1,994,189	2,139,878	722,641
David Mfg. Co.	1,049,485	1,139,621	1,269,879	410,475
Peerless Mattress Company	1,156,112	1,166,551	1,199,886	384,356
Sealy Mattress Co. of Southern California	2,366,880	2,615,428	2,901,188	1,028,586
Logan Co.	857,948	923,627	924,457	301,138
Slumber Products Corp.	4,309,134	4,703,633	4,787,450	1,722,593
The Waterbury Mattress Co.	2,515,851	2,375,486	2,501,348	906,615
York Sleep Products, Inc.	533,627	770,937	1,182,938	495,302
Sealy Mattress Co. of N. J., Inc.	1,405,491	1,361,208	1,354,077	513,296
Slumber Mattress Co.	2,262,482	1,885,980	1,726,483	713,477
Pettit Bedding Company	1,036,911	1,191,997	1,395,110	494,388
The Fred G. Hodges Bedding Company	766,738	817,820	891,500	360,484
Super-Rest Products Corporation	806,761	800,685	865,502	329,858
Sealy Mattress Company of St. Paul	1,489,397	1,549,171	1,797,825	590,657
Empire State Bedding Co., Inc.	2,219,536	2,227,136	1,983,485	705,451
H. W. Martin Co.*	—	—	—	—
Sealy Mattress Co. of Puerto Rico, Inc.*	—	—	—	—
Comfo-Sleep, Inc.*	—	—	—	—
Total All Licensees	$52,676,418	$53,954,483	$56,182,012	$20,156,188

*License became effective January 1, 1960 and no sales have been reported as yet.

[fol. 1389E] Interrogatory 9:

"9. State for each year since February 13, 1957 the total dollar sales volume of each non-Sealy product or licensee's private brand product sold by

(a) All licensees;
(b) Each licensee

as reported by licensees to Sealy, Inc."

Answer to Interrogatory 9:

The total dollar volume for the years 1957, 1958, 1959 and the first 5 months of 1960 of licensees' non-Sealy or private brand products sold within each licensee's Sealy territory, as reported to Sealy, Inc., was as follows:

Licensee	Year 1957	Year 1958	Year 1959	Through 5/31/1960
Eagle Mattress Co., Inc.	$ —	$ 641	$ 3,610	$ 1,396
The Maryland Bedding Company	—	—	14,206	—
Sealy Mattress Co. of Northern California	—	—	—	—
Metcalfe Brothers, Incorporated	25,970	9,403	—	9,152
Sealy Mattress Company of Houston	7,796	—	—	49,061
Sealy Mattress Company of New York City, Inc.	—	—	—	—
Fisher Products Company	—	—	—	—
Sealy Mattress Company	—	—	—	—
The Ohio Mattress Company	340,820	2,356	41,406	8,369
Colorado Mattress Manufacturing Company	1,172,824	1,262,397	1,396,474	498,730
Schmitt & Henry Manufacturing Co.	25,955	29,550	37,818	14,687
Brown Reliable Bedding Company	26,361	27,192	27,051	2,077
Sleepcraft, Inc.	4,525	11,682	19,389	7,652
David Mfg. Co.	72,065	10,209	—	9,927
Peerless Mattress Company	176,269	244,129	274,982	89,181
Sealy Mattress Co. of Southern California	—	18,098	15,264	7,158
Logan Co.	1,131	71	—	59
Slumber Products Corporation	637,455	481,402	317,588	53,536
The Waterbury Mattress Co.	85,323	46,561	30,387	15,488
York Sleep Products, Inc.	—	—	—	—
[fol. 1390E]				
Sealy Mattress Co. of N. J., Inc.	2,974	4,518	—	—
Slumber Mattress Co.	—	—	—	—
Pettit Bedding Company	105,761	135,319	149,652	52,298
The Fred G. Hodges Bedding Company	107,977	106,893	125,676	46,991
Super-Rest Products Corporation	88,543	16,117	3,958	1,392
Sealy Mattress Company of St. Paul	60,884	60,647	5,799	1,738
Empire State Bedding Co. Inc.	—	—	—	—
H. W. Martin Co.**	—	—	—	—
Sealy Mattress Co. of Puerto Rico, Inc.**	—	—	—	—
Comfo-Sleep, Inc.**	—	—	—	—
	$2,942,632	$2,467,185	$2,463,260	$868,865

* No reports were made by licensees to Sealy, Inc. with respect to sales of licensees' non-Sealy or private brand products outside their Sealy territories.

** License became effective January 1, 1960 and no sales have been reported as yet.

[fol. 1391E] In United States District Court

Government's Exhibit No. 1113

United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 60 C 844

United States of America, Plaintiff,

v.

Sealy, Inc., Defendant.

Defendant's Answers to Certain of Plaintiff's Interrogatories Served of Defendant, Sealy, Inc., June 14, 1960.

• • • • • • •

[fol. 1392E] Interrogatory 58:

"58. Identify for the period since February 13, 1957 the name, members of, and chairman of each committee of Sealy, Inc. and describe what each committee did, including each of the following committees if in existence during any part of the stated period: (a) Executive; (b) Advertising and Merchandising; (c) Sales Managers; (d) Promotional sales; (e) Specification and costs; (f) Upholstery; (g) Markets; (h) Planning and expansion; (i) Grievance; (j) Licensee guidance and advisory."

Answer to Interrogatory 58:

The table below indicates for the period since February 13, 1957 the membership and the chairmanship for the *Executive Committee* of Sealy, Inc. The Executive Committee has during said period, between meetings of the Board of Directors of Sealy, Inc., met at various times and has had the right to exercise the powers of said Board except the power to alter or amend the by-laws of Sealy,

Inc. and the power to fill vacancies in its own membership. At such meetings the Executive Committee considered and acted upon such matters as advertising, specifications, quality control, contracts and provided counsel to the President of Sealy, Inc. in corporate affairs:

Executive Committee Membership	Chairman (Year)	Year of Membership 1957	1958	1959	1960
M. A. Kaplan	1957, 1959, 1960	X	X	X	X
P. D. Brown		X	X	X	-
L. G. Haas		X	X	X	X
E. M. Wuliger		X	X	X	X
M. H. Yulman		X	X	X	X
H. B. Fouts		-	X	X	X
E. H. Bergmann	1958	-	X	X	X
H. F. Kaufman		-	X	X	X
I. L. Fisher		-	-	-	X

[fol. 1393E] During 1957 and 1958 the *Advertising & Merchandising Committee* of Sealy, Inc. considered various advertising and promotional campaigns, reviewed merchandising techniques and developed national advertising and merchandising programs. The membership and chairmanship of the Advertising & Merchandising Committee during that period were as follows:

Advertising & Merchandising Committee Membership	Chairman (Year)	Year of Membership 1957	1958
E. M. Wuliger	1957	X	X
M. A. Kaplan		X	X
W. H. Walzer		X	X
B. Nathanson		X	X
C. V. Bovard		X	X
G. C. Shappell		X	X
R. C. Stuart		X	-
Seymour Nordenburg	1958	-	X
I. L. Fisher		-	X

During 1959 and 1960 the *Sales Promotion & Product Planning Committee* of Sealy, Inc. has been responsible for the development of sales and advertising, the merchandising of new products, the improvement of products and for research. The membership and chairmanship of the Sales Promotion & Product Planning Committee during that period were as follows:

Sales Promotion & Product Planning Committee Membership	Chairman (Year)	Year of Membership 1959	1960
I. L. Fisher		X	-
M. A. Kaplan		X	X
E. C. Haas, Jr.		X	X
W. H. Walzer	1959	X	-
E. M. Wuliger	1960	X	X
J. R. Rudick		-	X
J. J. Willens		-	X
E. H. Bergmann		X	X
Howard G. Haas		X	X
Gerald C. Shappell		X	X
Carl N. Singer		-	X

[fol. 1394E] During the period since February 13, 1957 several Sealy, Inc. committees have existed which had as their purpose the creation and development of new products and the improvement of existing products in both the upholstery and the bedding line. These committees prepared manufacturing specifications to be followed with respect to such products and in addition such committees developed estimated average manufacturing costs of such products. The membership, chairmanship and name of each such committee as well as the time period during which each committee existed are set out below:

Bedding—Product Development and Specifications
(1957)

Membership	Chairman
L. G. Haas	X
E. C. Haas, Sr.	
J. L. Metcalfe	
J. J. Willens	
D. T. Armstrong	
H. R. Judson	

Cost—Bedding & Upholstery
(1957)

Membership	Chairman
Bernard M. S. Kegan	X
C. W. Langstaff	
Allen Unger	
Seessel Wayne	
D. T. Armstrong	
G. L. Fraikin	

[fol. 1395E]

Upholstery—Advisory & Finalization
(1957)

Membership	Chairman
L. G. Haas	X
M. A. Kaplan	
M. I. Walzer	
E. M. Wuliger	
D. T. Armstrong	
H. R. Judson	
W. A. Marbaugh	
L. C. Algoren	

Specifications
(1958)

Membership	Chairman
David T. Armstrong	X
King Brown	
L. G. Haas	
Ben Rosenfeld	
Allan Unger	
M. I. Walzer	
Seessel Wayne	

Upholstery—Product Planning
(1959)

Membership	Chairman
E. C. Haas, Jr.	X
David T. Armstrong	
Sam Aaronson	

Bedding—Product Planning
(1959)

Membership	Chairman
I. L. Fisher	X
David T. Armstrong	
Sam Aaronson	

Upholstery Sub-Committee
(1960)

Membership	Chairman
Edgar C. Haas, Jr.	X
Gus Amter	
J. Rotblatt	
J. R. Rudick	
A. S. Wayne	
J. J. Willens	
Sam Aaronson	
H. G. Haas	
Warren Pope	

[fol. 1396E] Bedding Sub-Committee
(1960)

Membership	Chairman
J. R. Rudick	X
J. S. Alman	
I. L. Fisher	
B. M. S. Kegan	
E. M. Salomon	
M. W. Walzer	
Sam Aaronson	

During the years 1957, 1958 and 1959 the *Market Committee* of Sealy, Inc. made preparation for markets, secured space for such markets, and decorated space for displays of Sealy products at those markets. The committee suggested the type of merchandise to be shown during such markets and established procedures to be followed during markets. The membership of that committee is shown below.

Market Committee Membership	Years of Membership 1957	1958	1959
W. H. Walzer *	X	X	
M. A. Kaplan *	X	X	
J. L. Metcalfe *	X	X	X
M. H. Yulman *	X	X	X
M. J. Marzluft *	X	X	X
L. G. Haas *		X	X
E. Salomon, Jr.*			X
R. Unger *			X
Howard Haas			X
Del Markoff			X

* Chairman for an individual market.

For the year 1960 the functions of the Market Committee described above have been divided between a *Chicago Market Committee* and a *Distant Market Committee*. The membership of these two committees is indicated below:

[fol. 1397E] Chicago Market Committee
(1960)

Membership	Chairman
Ted Deutsch	
William Eddie	
E. J. Larkin	
J. Hotblatt	
K. Sackse	
E. M. Wuliger	
H. G. Haas	X

Distant Market Committee
(1960)

Membership

L. G. Haas *
M. J. Marsluft *
J. V. Moffitt, Jr.*
E. M. Salomon, Jr.*
M. H. Yulman *

* Chairman for an individual market.

During 1957 the *Planning Committee* of Sealy, Inc. was responsible for the investigation and development of policy matters relating to franchise operations. In 1958 no Sealy, Inc. committee performed those functions but for the years 1959 and 1960 the *Policy Planning Committee* was responsible for those functions. The membership and chairmanship of both committees were as follows:

Planning Committee
(1957)

Membership	Chairman
H. B. Fouts	X
P. D. Brown	
R. G. Culp	
Ben Rosenfeld	

Policy Planning Committee
(1959-1960)

Membership	Chairman	1959	1960
M. H. Yulman	1959-60	X	X
H. B. Fouts		X	X
B. M. S. Kegan		X	X
H. F. Kaufman		X	X
J. J. Willens		X	X
E. H. Bergmann		X	X

[fol. 1398E] During the period since February 13, 1957 the *Sales Managers Sub-Committee* of Sealy, Inc. has considered the efficacy of various sales promotions and has furnished ideas for future promotions. The membership and chairmanship of that committee are shown below:

Sales Managers Sub-Committee Membership	Chairman (Year)	Year of Membership 1957	1958	1959	1960
R. C. Stuart	1957	X	—	—	—
C. V. Bovard		X	X	—	—
G. C. Shappell		X	X	—	—
Victor Cleinman		X	X	—	X
A. L. Goodman		X	X	—	—
E. Larkin		X	X	—	—
C. B. McGillivray		X	X	—	—
Kolmon Sackse		X	X	—	—
Roy Unger		X	X	—	—
Seymour Nordenburg	1958	—	X	—	—
W. H. Walser	1959	—	—	X	—
M. A. Kaplan		—	—	X	—
Howard Haas	1960	—	—	X	X
Ted Deutsch		—	—	—	X
Al Harmon		—	—	—	X
Manny Kramer		—	—	—	X
Robert McLelland		—	—	—	X
J. Rolblatt		—	—	—	X
M. Marchi		—	—	—	X

During the years 1959 and 1960 the *National Accounts Sub-Committee* of Sealy, Inc. investigated and developed sales programs designed to increase sales through retailers utilizing a centralized purchasing office. Membership as well as chairmanship of that committee is set out below:

National Accounts Sub-Committee
(1959–1960)

Membership	Chairman	1959	1960
M. A. Kaplan	1959–1960	X	X
Del Markoff		X	X
H. F. Kaufman		—	X
Manny Kramer		—	X
E. J. Larkin		—	X
J. R. Rudick		—	X
E. M. Salomon		—	X

[fol. 1399E] The *Budget & Finance Subcommittee* of Sealy, Inc. during the years 1959 and 1960 reviewed budgets and various financial programs of Sealy, Inc. Membership and chairmanship of that committee were as follows:

Budget & Finance Sub-Committee Membership	Chairmanship	1959	1960
H. F. Kaufman	1959–1960	X	X
H. B. Fouts		X	X
L. G. Haas		X	X
P. D. Brown		—	X
Hugh J. Gallagher		X	X

During 1960 Sealy, Inc.'s *Subcommittee on Industry Practices* considered and documented practices existing in the bedding industry and was made up of the following members.

Industry Practices Sub-Committee Membership	Chairman
B. M. S. Kegan	X
I. L. Fisher	
L. G. Haas	

[fol. 1400E] Interrogatory #62:

"62. State whether it was one of the responsibilities of the Director of Advertising and Merchandising, or any other employee of Sealy, Inc. during any part of the period since April 12, 1956 to do any of the following:

(a) Recommend pricing of products for resale;

(b) Determine the make-up of the product line and recommend pricing practices to be followed; and, if the answer is in the affirmative, identify by name each such employee and describe fully his activities with reference to prices."

Answer to Interrogatory #62:

During the year 1958 it was one of the responsibilities of Seymour Nordenberg, Director of Advertising and Merchandising and Chairman of the Advertising and Merchandising Committee of Sealy, Inc., to participate with that Committee in the determination of the make-up of the Sealy product line and the recommendation of suggested retail prices with respect thereto. In 1956, Sealy staff member, Joseph Callick, was responsible for participating with the Advertising and Merchandising Committee in performing the functions described above, as were staff members C. V. Bovard, G. C. Shappell, R. C. Stewart and E. H. Bergmann in 1957 and 1958. During 1959 and 1960 staff members E. H. Bergmann, Howard Haas, G. C. Shappell and Carl N. Singer performed such functions in conjunction with the Sales Promotion and Product Planning Committee of Sealy, Inc.

The activities with reference to suggested retail prices of the Sealy staff members referred to above consisted of a general exercise of their professional expertise as required [fol. 1401E] by their employer, Sealy, Inc. In particular, such staff members continually studied competitive conditions in the bedding industry for the purpose of formulating programs which would permit Sealy products to compete successfully with the products of other manufacturers of bedding.

* * * * * * *

[fol. 1402E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1168

Min NL PD Pensacola Flo July 2 1956 347PM

Sealy—
Marty Rudick

Care Sealy Mattress Co Balto

I have been informed by our Washington store that you are holding up our orders due to some misunderstanding. Please continue filling our special orders so that our business reputation is not jeopardized pending my return. Will return to Washington in about one week.

Gloria S. Bennett, U.S. Merchandise Mart.

Received July 9, 1956.

[fol. 1403E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1169

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland
GIlmor 5-7010

July 27, 1956.

Mr. Norman Bennett
U. S. Merchandise Mart, Inc.
1121 14th St. N.W.
Washington 5, D. C.

Dear Mr. Bennett:

We are in receipt of your letter of July 26th, for which please accept our thanks.

Your letter, however, does not give us the complete information that we have been asking of you. We had asked that the shipment in question be traced and the original date of order as shown on your original order be sent to us, (or a photostat of same). We have also asked that your firm go on record with us in writing, stating that you will not at any time ship Sealy merchandise outside of this immediate area.

I trust that you can appreciate the fact that we require the copy of your order mentioned above, and the written understanding in reference to shipments, not for our own purposes only, but must forward this information into our National Offices, because of the scope of this situation on a national basis.

We will be looking forward to receiving this further information from you within the next few days, and wish to thank you for your cooperation in this matter.

Yours very truly, Sealy Mattress Company, Marty Rudick.

MR:ap

[fol. 1404E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1170

August 21, 1956.

Mr. Marty Rudick
Sealy Mattress Company
2307 Hollins St.
Baltimore 23, Md.

Dear Mr. Rudick:

Your letter of July 27, was delayed in reaching my attention. I have been very busy shifting one of our stores to Annapolis, Md.

Please clarify your request that we certify not to ship Sealy outside of this immediate area by specifying the limits of this area.

As you know, we conduct advertising to service personnel on a national scale. Does this mean that service personnel at outlying bases would be prevented in ordering by mail from Washington? Please clarify the restrictions.

Very truly yours, U. S. Merchandise Mart Inc.,
Norman Bennett, President.

[fol. 1405E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1171

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland

GIlmor 5-7010

August 29, 1956.

Mr. Norman Bennett
American Home
1121 14th St. N.W.
Washington 5, D. C.

Dear Mr. Bennett:

We are in receipt of your letter of August 21st. In answer to your question, the area to which we refer, is the greater metropolitan Washington, D. C. area.

In reviewing your past orders, and noting the shipping destinations, it seems that this is where all of your merchandise obtained from us has been sold. The few exceptions to this, have been the ones that have caused the repercussions of which you are no doubt aware.

Although you probably and undoubtedly have the right to ship merchandise which you purchase wherever you choose to ship it, it is within the interests of pleasant business relations that we have asked you to refrain from shipping our merchandise out of this greater metropolitan Washington area. I certainly think that the few sales that might be involved during the period of a year's business, would hardly be worth the trouble and jeopardy that those sales might make for both of us.

I will certainly appreciate hearing from you as soon as possible as to your feelings and intentions in reference to the above. Thank you for your cooperation.

Yours very truly, Sealy Mattress Company, Marty Rudick.

MR:ap

[fol. 1406E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1172

September 10, 1956.

Mr. Marty Rudick
Sealy Mattress Company
2307 Hollins Street
Baltimore 23, Md.

Dear Mr. Rudick:

In reference to your letter of August 29th, please be assured that we will not ship Sealy Bedding to other than customers who place their orders in the Washington area stores. We assume our new Annapolis store will be included in this area.

Even though we do not believe this restricting to be justified in all cases, we are doing so in the interest of pleasant business relations.

Very truly yours, American Home Division of U. S. Merchandise Mart, Norman Bennett, President.

NB:hr

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956 211956 984

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CITATIONS

Cases:

Denison Mattress Factory v. *Spring-Air Co.*, 308 F. 2d 403 — 10

Klor's, Inc. v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 — 10

Northern Pacific Railway Co. v. *United States*, 356 U.S. 1 — 7, 10

Timken Roller Bearing Co. v. *United States*, 341 U.S. 593 — 7

United States v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, affirmed, 175 U.S. 211 — 7

United States v. *Masonite Corp.*, 316 U.S. 265 — 1

United States v. *National Lead Co.*, 63 F. Supp. 513, affirmed, 332 U.S. 319 — 7

United States v. *Nationwide Trailer Rental System*, 156 F. Supp. 800, affirmed, 355 U.S. 10 — 7

United States v. *Restonic Corp.*, 1960 Trade Cases ¶69,739 (N.D. Ill.) — 3

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United States v. *Spring-Air Co.*, 1962 Trade Cases ¶70,402 (N.D. Ill)	3, 10
White Motor Co. v. *United States*, 372 U.S. 253	1, 6, 7, 8, 9

Statutes and rule:

Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29, Sec. 2	1
Lanham Trade-Mark Act, 15 U.S.C. 1051, *et seq.*:	
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Sec. 33(b)(7)	10
Sec. 44	10
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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

SEALY, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINION BELOW

The district court's findings of fact and conclusions of law (App. A, *infra,* pp. 1a–111a) and the final judgment (App. B, *infra,* pp. 112a–116a) are unreported.

JURISDICTION

The judgment of the district court was entered on December 30, 1964. The notice of appeal was filed on February 25, 1965. The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *White Motor Co.* v. *United States,* 372 U.S. 253; *United States v. Masonite Corp.,* 316 U.S. 265.

QUESTION PRESENTED

Sealy, Inc., is owned and controlled by approximately 30 bedding manufacturers. Each of them is licensed by Sealy to manufacture and sell bedding under Sealy's trademarks in mutually exclusive territories. The question presented is whether this allocation of territories among the manufacturers violates Section 1 of the Sherman Act.

STATUTE INVOLVED

Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, provides, in pertinent part:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

STATEMENT

This is a direct appeal arising out of a civil action brought by the United States, charging that Sealy, Inc., ("Sealy") had violated Section 1 of the Sherman Act by conspiring with manufacturers who make and sell bedding products under Sealy's trademarks and trade names to fix the retail sales price of such bedding products and to allocate mutually exclusive sales territories.[1] After trial, the district court held that

[1] Three other cases were brought at the same time which challenged price fixing and territorial allocation arrangements of other mattress companies—arrangements which were virtually identical to the ones challenged in this case. In two of these cases consent decrees were entered in which the companies agreed to eliminate territorial restrictions. *United States* v.

Sealy had violated Section 1 by agreeing to set minimum retail prices and by inducing retailers to adhere to such retail prices, but held that the exclusive territorial arrangements did not violate the antitrust laws (App. A, *infra*, p. 111a).

The district court's findings of fact and the undisputed documentary evidence establish the following facts: Sealy does not, itself, manufacture bedding products, but owns trade names and trademarks for such products. It licenses approximately 30 companies to manufacture and sell products under its trademarks in mutually exclusive territories (Fdgs. 12, 27, App. A, *infra*, pp. 5a, 12a). The 30 licensees are required by their license agreements to own stock in Sealy and they must offer this stock for sale to Sealy upon termination of their licenses (GX 1011–1018, 1031, 1085).[2] Collectively, the 30 manufacturers own 92 percent of the Sealy shares; the remaining 8 percent are held by officers of Sealy (Tr. 2213, 2217). Sealy's bylaws limit membership on its board of directors to representatives of its licensees (GX 31–F).

The "Sealy" trademark has been used on bedding since 1889 (Fdg. 16, App. A, *infra*, p. 6a). In 1923, the Sealy Mattress Co. was a department of Sugar Land Industries, a trust estate. By that time, Sugar Land had licensed 20 independent manufacturers to manu-

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Restonic Corp., 1960 Trade Cases ¶69,739 (N.D. Ill.); *United States* v. *Spring-Air Co.*, 1962 Trade Cases ¶70,402 (N.D. Ill.). The other case is awaiting trial, *United States* v. *Serta Associates, Inc.* (N.D. Ill.).

[2] "GX —" refers to Government exhibits introduced at trial. "Tr. —" refers to the transcript of the trial.

facture and sell bedding products in restricted territories under the "Sealy" trademarks and tradenames (Fdgs. 17, 18, 27, App. A, *infra*, pp. 6a, 7a, 12a). In 1923 Sugar Land decided to withdraw from the bedding business. It gave an option to E. E. Edwards to purchase all of the Sugar Land bedding department's intangible assets, including the "Sealy" trademarks and trade names and its license contracts (Fdg. 18, App. A, *infra*, p. 7a). In 1925, Edwards and the independent manufacturers who had been Sealy licensees formed and purchased the stock of the Sealy Corporation, which exercised the option and undertook to pay Sugar Land $150,000 for the designated assets within six years (Fdgs. 20–22, App. A, *infra*, pp. 8a–9a). As part of the organizational arrangement, the manufacturers who thus became shareholders of Sealy Corporation agreed upon a system of territorial restrictions whereby each licensee would manufacture and sell Sealy products within a designated territory and would not manufacture or sell Sealy products in any other licensee's territory (Fdg. 27, App. A, *infra*, p. 12a).

The Sealy Corporation remained in business until 1933, when it defaulted on its $150,000 debt to Sugar Land. Business failures caused by the depression had reduced the number of Sealy licensees to eight, and these eight manufacturers reorganized the company into the present Sealy, Inc. A proposal permanently to divide the entire United States among the eight remaining licensees was "seriously considered and discussed at length" at the time but was rejected

(GX 8, p. 2; Fdg. 86, App. A, *infra*, p. 36a). However, the manufacturers did agree to confine their sales of Sealy products within mutually exclusive territories and to refrain from manufacturing or selling such products in any other licensee's exclusive territory (Fdg. 27, App. A, *infra*, p. 12a). They later arranged that individual manufacturers might allocate part of their territories to other manufacturers of their selection if the new licensees would purchase stock in Sealy (GX 31–E, p. 3).

The plan to allocate exclusive territories among the manufacturers operated as follows: The manufacturers agreed to pay $10 to Sealy for each item which was sold under the Sealy trademark in another licensee's territory. This was a heavy fine for, in the early years, mattresses were priced as low as $19.75 at retail (Fdg. 128, App. A, *infra*, p. 53a). Sealy was to turn the $10 fine over to the manufacturer in whose territory the items had been sold (GX 1012–1106). When disputes arose between licensees because of claimed sales in each other's territories, Sealy encouraged the manufacturers to work out the problems among themselves (Fdg. 30, App. A, *infra*, pp. 13a, 14a). This often resulted in the licensees settling the dispute by exchanging parts of their territories (Tr. 231, 576–579, 800–804, 828–830, 940–944). In the event that the licensees could not settle such disputes between themselves, Sealy intervened and issued instructions to stop further sales in one another's territories (Tr. 1218–1222, 1240–1281, 1303–1307, 1334–1343).

At the close of the government's case in chief, the district court overruled a motion to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure but stated, "should there ever be a decree there will be nothing in it finding that the territorialization, in my opinion, was a violation of the antitrust laws" (Fdg. 8, App. A, *infra*, p. 4a). Sealy thereafter limited its presentation of evidence to the issue of price fixing and, at the close of trial, renewed its motion to dismiss. The court found that, in the formation of Sealy, there had been no central conspiratorial purpose to divide the United States among competing mattress manufacturers (Fdg. 25, App. A, *infra*, pp. 10a–11a) and that the imposition of territorial restrictions was "ancillary" to the proper exploitation of the Sealy name and trademarks (Fdg. 84, App. A, *infra*, pp. 33a–34a). The court therefore concluded that there was no conspiracy to allocate markets (Fdg. 84, 119, App. A, *infra*, pp. 33a–34a, 51a–52a) and granted the motion to dismiss this part of the complaint. It went on to find that Sealy had engaged in resale price fixing in violation of Section 1 of the Sherman Act and issued an appropriate injunction (App. B, *infra*, pp. 112a–116a).

THE QUESTION IS SUBSTANTIAL

The Sherman Act prohibits competitive manufacturers from agreeing to divide territories. This rule was reaffirmed in *White Motor Co.* v. *United States*, 372 U.S. 253, 259, where the Court, although it refrained from deciding whether a *vertical* arrangement by which a manufacturer restricted the territory of

his dealers was *per se* illegal, stated, without qualification, that "[i]f competitors agree to divide markets, they run afoul of the antitrust laws." In the present case, competitive manufacturers have agreed to limit their manufacture and sale of trademarked goods to specified territories through arrangements with a trademark owner which they own and control. The district court has held these arrangements to be lawful. In our view, the arrangements in this case, although formally vertical, amount to agreements between competitors to divide markets. The decision of the district court therefore creates an important exception to the absolute prohibition upon horizontal territorial agreements and should be reversed.

1. Agreements among competitors dividing up the territories in which they would otherwise compete are *per se* illegal. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6), affirmed, 175 U.S. 211; *United States* v. *National Lead Co.*, 63 F. Supp. 513 (S.D.N.Y.), affirmed, 332 U.S. 319; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593; *United States* v. *Nationwide Trailer Rental System*, 156 F. Supp. 800 (D. Kan.), affirmed, 355 U.S. 10. Such restrictive agreements are among those which "because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 5. *White Motor Co.* v. *United States*, 372 U.S. 253,

263, reaffirmed that "[h]orizontal territorial limitations * * * are naked restraints of trade."

The system challenged in the present case is, in effect, a "horizontal" division of territories illegal *per se* under this principle. The Sealy Corporation, which issues the licenses binding the manufacturers to limited territories, is controlled and almost entirely owned by the manufacturers whom the licenses bind not to compete with each other. Each licensee is a stockholder of Sealy; together, the licensees own 92 percent of Sealy's stock; and the Sealy board of directors is composed exclusively of representatives of the manufacturers. Thus, the decision to maintain the division of territories is in the hands of those whose competition is restrained. In concurring in *White Motor,* 372 U.S. at 267, Mr. Justice Brennan stated:

> * * * If it were clear that the territorial restrictions involved in this case had been induced solely or even primarily by appellant's dealers and distributors, it would make no difference to their legality that the restrictions were formally imposed by the manufacturer rather than through inter-dealer agreement. Cf. *Interstate Circuit, Inc.* v. *United States,* 306 U.S. 208; *United States* v. *Masonite Corp.,* 316 U.S. 265, 275–276.

We believe this view to be implicit in the opinions of all the Justices in *White Motor;* it is dispositive of the present case.

The fact that all the licensees do not have the same voice in running Sealy and that the latter has played an active role in fixing the licensees' territories and resolving disputes among them on that subject, cannot save the Sealy territorial allocation plan from condemnation as a *per se* illegal division of markets. For the critical fact is that firms operating at the same functional level—all the licensees both manufacture and sell Sealy products, and Sealy itself does neither—have agreed, through the medium of Sealy, to limit the territories in which they do business. This appeal thus squarely presents the important question, which this Court has not decided, whether competing firms which could not directly divide markets may accomplish the same thing through the issuance, by a licensor which they and own and control, of trademark licenses which limit the territories in which they may sell the trademarked products.

2. In reaching the conclusion that the territorial agreements in this case were lawful, the district court adopted the defendant's proffered findings which suggest that the primary purpose of the arrangement was to finance national advertising of Sealy products in competition with larger manufacturers of other brands, and to protect the goodwill attached to the Sealy trademarks. If we are correct that the case shows what is, in effect, a horizontal agreement between potential competitors to divide territories, then the suggested defenses are irrelevant. Since such an

agreement is illegal *per se*, any proffered legitimate purposes, such as collective advertising, are immaterial, for the essence of the *per se* rule is that no showing of reasonableness in the circumstances can prevail in the face of the evident restraint upon competition. See *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207; *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1; *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150. Nor does the fact that the manufacturers here utilized a single trademark exempt them from the Sherman Act. The Lanham Act provides that a trademark may not be "used to violate the antitrust laws of the United States" (Sec. 33(b)(7), 15 U.S.C. 1115(b)(7)) and this Court has held specifically that trademarks may not be used as a justification for the division of territories among competitors, *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593, 598–599. A division of territories here is not necessary to safeguard the Sealy trademark, which may be fully protected without such an arrangement by the requirement that all licensees meet quality standards imposed by Sealy.[3]

[3] We submit that the Fifth Circuit's decision in *Denison Mattress Factory* v. *Spring-Air Co.*, 308 F. 2d 403, that territorial restrictions are necessary in a case such as this to prevent confusion as to the source of the trademarked goods, is wrong. Since all the goods covered by the trademark must be of the same nature and quality (15 U.S.C. 1055, 1127), and since the purpose of using the trademark is to convince the public that all Sealy mattresses are the same, territorial restrictions cannot be justified as necessary to prevent the public from deception. In *United States* v. *Spring-Air Co.*, 1962 Trade Cases ¶70,402 (N.D. Ill.), Spring Air Co., which one month later prevailed in the *Denison* case, consented to a decree enjoining its use of territorial restrictions.

CONCLUSION

The decision of the district court permits an arrangement whereby competitive manufacturers may divide territories (and thus avoid a *per se* restriction of the antitrust laws) by taking restrictive licenses from a trademark holder whom they collectively control. This appeal presents a substantial question of importance in the administration of the Sherman Act and probable jurisdiction should be noted.

Respectfully submitted.

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JUNE 1965.

APPENDIX A

In the United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SEALY, INC., DEFENDANT

FINDINGS OF FACT

STATEMENT OF PROCEEDINGS

1. This is a civil action upon complaint of the United States of America (plaintiff) against defendant Sealy, Incorporated (Sealy) under 15 U.S.C. § 4 to prevent and restrain alleged violation by Sealy of the Sherman Act, 15 U.S.C. § 1. [Complaint, Para. 1]

2. Jurisdiction of the subject matter hereof and proper venue of the defendant hereto duly appear and are not contested. [Complaint, Paras. 1, 2; Answer, Para. 1]

3. The complaint herein was filed on May 31, 1960. It charges that Sealy and certain bedding manufacturers (not named, but designated as co-conspirators), licensed by Sealy to manufacture and sell items of bedding under the Sealy trade names and trademarks, have engaged in combination and conspiracy in unreasonable restraint of trade in Sealy products in violation of Section 1 of the Sherman Act. Paragraph 16 of the complaint charges that the "combination and conspiracy has consisted of a continuing agreement, understanding,

and concert of action among Sealy and the co-conspirators, the substantial terms of which have been that, with respect to Sealy products, they agreed:

> "(a) That each member factory will sell Sealy products only within the exclusive marketing territory allocated to it, and will refrain from selling Sealy products outside such exclusive marketing territory;
>
> "(b) to fix uniform suggested retail prices, and to induce retail stores to adhere to such suggested retail prices, for the purpose of fixing and stabilizing the retail prices of Sealy products."

[Complaint, Paras. 3–5, 12–14, 15–16]

4. Defendant filed its answer on August 1, 1960. It denies the allegations of the charging paragraphs of the complaint; it admits that "Sealy licensees are licensed to manufacture and sell Sealy products in specified geographical areas." [Answer, Para. 12] The definitions of "Sealy products" in both the complaint and answer exclude private label bedding, and there is no allegation that any licensee was restrained in any way in his manufacture or sale of products bearing his own label. [Complaint, Para. 10; Answer, Para. 6]

5. In its answer, defendant made the following affirmative statements in defense against the charges in the complaint:

> "a. The provisions of the Sealy licenses and Sealy's administration of its advertising, merchandising and quality control programs, attacked by the complaint herein, are reasonably ancillary to the proper protection and exploitation by Sealy of its trademarks, trade names, patents, processes and manufacturing and merchandising techniques.
>
> "b. The licensing arrangements between Sealy and its licensees are reasonable and necessary in order to enable said licensees (who are by United States Census definition 'small busi-

nessmen') to manufacture, nationally advertise, and sell products of uniform quality under the Sealy trade names and trademarks and thereby to provide effective competition in the bedding industry, and in particular with the well-established, nationally-advertised brands of the corporate manufacturers of bedding; such arrangements are neither designed to nor do they have the effect of unreasonably restraining competition.

"c. The licensing arrangements between Sealy and its licensees do not restrict the manufacture and sale by Sealy licensees of non-Sealy bedding (so long as such bedding is not passed off as a 'Sealy product'), and defendant avers upon information and belief that many of said licensees do in actual practice manufacture such non-Sealy bedding and sell the same both within and without their licensed territories.

"d. The licensing arrangements between Sealy and its licensees benefit the public through improved construction, uniformity in quality, reduced costs, and the additional competition which such arrangements enable Sealy licensees to provide in the bedding industry.

"e. The bedding industry of which Sealy and its licensees are a part is characterized in all parts of the United States by a large number of manufacturers and an even larger number of brands and grades of bedding in numerous price ranges, by vigorous competition among manufacturers for the business of retail stores and among retail stores for consumer trade, and the arrangements between Sealy and its licensees have not unreasonably restrained such competition.

"f. The relief for which plaintiff prays is contrary to the public interest in that it would tend to destroy the ability of Sealy and its licensees to compete in the bedding industry and would tend to augment the already substantial market positions enjoyed by the corporate

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manufacturers of nationally advertised brands of bedding." [Answer, Para. 15]

6. The trial commenced on December 5, 1963, and it proceeded in several separate stages for sixteen trial days, concluding on March 17.

7. Plaintiff's evidence in its case in chief was wholly documentary, consisting almost entirely of defendant's corporate documents, *i.e.*, charter, by-laws, stockholders, directors and committee minutes, and correspondence from its files.

8. At the close of plaintiff's case in chief, defendant filed a motion for judgment of dismissal under Rule 41 (b) of the Federal Rules of Civil Procedure, and oral argument was had thereon. The Court made the following ruling and comment: "the motion to dismiss at the end of the Government's case is overruled. However, let me say that should there ever be a decree there will be nothing in it finding that the territorialization, in my opinion, is a violation of the antitrust laws. * * *" [R. 2575]

9. In its defense, Sealy presented testimonial and documentary evidence expressly limited to the price allegations of Para. 16(b) of the complaint, and at the close of the trial it has renewed its motion to dismiss the territorial allegations of Para. 16(a) of the complaint under Rule 41(b). [see R. 3366–70]

10. While the complaint charges a single conspiracy, plaintiff's evidence was presented in segments relating either to the charging paragraph alleging territorial restrictions or the charging paragraph alleging price restrictions, and these two aspects of the complaint are severable. As the attorney for the plaintiff said in oral argument upon defendant's motion to dismiss:

> "There are only two issues in this case; one, have the defendants conspired to fix prices; two,

have they conspired to allocate territory." [R. 2517]

Similarly, in his opening statement, counsel for plaintiff said:

> "The defendant, Your Honor, would like to make this a complex matter. There is, however, Your Honor, only one conspiracy consisting of *two charges* or terms of the conspiracy in this case. The first is that the defendant conspired to fix prices, and the second is that the defendant was engaged in a conspiracy to divide territories. Thus, there are two sets *of facts,* the existence or nonexistence of which are all that need be ascertained." (Emphasis added.) [R. 11]

The Defendant

11. Sealy, Incorporated is a Delaware corporation with its headquarters and principal place of business in Chicago, Illinois [Complaint, Para. 3; Answer, Para. 3]

12. Sealy's principal business is the licensing of approximately thirty bedding manufacturers (Sealy licensees) to manufacture and sell mattresses, foundations and other items of bedding under the Sealy name and Sealy trademarks in accordance with prescribed specifications, in various parts of the United States. [Complaint, Para. 12; Answer, Para. 8; GX 1107, Interrogatory 7, R. 2369]

13. Sealy licensees pay royalties to Sealy for the privilege of using the Sealy name, trademarks, patents and processes [GX 31E, R. 273]; Sealy's royalty income in 1958 was $1.2 million, and in 1959, $1.4 million. [GX 1107, Interrogatory 7, R. 2369]

14. Sales of bedding by all Sealy licensees were $56.6 million in 1957, $56.4 million in 1958, and $58.6 million in 1959. During these three years, the annual sales of individual licensees ranged from a low

of $533,000 to a high of $6.5 million. In only one of these three years were there as many as five licensees with sales in excess of $3 million, and in each of the other two years about three-fourths of the licensees had sales between $1 million and $3 million. [GX 1107, Interrogatories 8 and 9, R. 2369]

PART ONE

THE ALLEGED CONSPIRACY TO DIVIDE MARKETS AND ELIMINATE COMPETITION IS REFUTED BY THE RECORD EVIDENCE

15. Plaintiff's basic contention is that defendant's territorial licenses were entered into for the purpose of dividing territories and eliminating competition among the Sealy licensee manufacturers and that, as such, they are *per se* illegal. Defendant claims, on the other hand, that the territorial provisions of its licenses were merely ancillary to the several entirely legitimate business purposes of the Sealy licensing arrangements, and that they do not unreasonably restrain trade in violation of the Sherman Act. In support of its position, defendant cites the origin, history, and development of Sealy and its predecessor companies, the evidence of their lawful commercial activities, and the complete absence of evidence of an unlawful purpose to divide markets and eliminate competition.

I. EARLY HISTORY OF SEALY UNDER SUGAR LAND INDUSTRIES

16. The evidence does not show the origin of the Sealy mattress or its manufacturers, but there is a reference in a registered trademark to the continuous use and application of the "Sealy" mark on bedding since 1889. [GX 987, R. 2272]

17. The record also contains several trademarks for mattresses that were registered by the Sealy Mattress Co. of Sugar Land, Texas, in 1918. [GX 987, R. 2272] The evidence identifies Sealy Mattress Co. in 1923 as the name of the mattress department conducted by Sugar Land Industries (Sugar Land), a trust estate (a form of business organization). [GX 2, p. 3–7111, R. 124]

18. In 1923, Sugar Land Industries entered into an option agreement with E. E. Edwards. This contract stated that Sugar Land owned "the trade name of 'Sealy Mattress Company' and various patents, trademarks, copyrights, trade names, and good will connected with the business conducted by * * * [Sugar Land] under the name of Sealy Mattress Company," and including trademarks registered in 1892 and 1895. The contract further stated that Sugar Land had entered into numerous license contracts with mattress manufacturers "in different parts of the United States," giving them the right to manufacture and sell mattresses under Sealy trade names and trademarks in exchange for the payment of royalties to Sugar Land. The contract gave Edwards the option to purchase the trade name of Sealy Mattress Company and all of the intangible assets of Sugar Land's mattress department, including the license contracts with other manufacturers, for $150,000. [GX 2, p. 3–7111, R. 124]

II. SEALY CORPORATION

A. *Organization of Sealy Corporation by E. E. Edwards*

19. E. E. Edwards appears throughout the early history of Sealy as shown in the record. In January 1925, he was chairman of the sixth semi-annual general convention of the Sealy mattress factories. In the minutes of that meeting, which were signed by Edwards, he summarized the comments he had made at the meeting on

his plan to purchase the patents, trademarks and good will of Sealy Mattress Co. He further stated that Thomas H. Cobbs, an attorney from St. Louis who had worked with him for the past three years on the Sealy plan, was present at the meeting. The plan envisioned organization of a new corporation, made up of Sugar Land's Sealy licensees, to take advantage of Edwards' option and purchase the intangible Sealy assets from Sugar Land. [GX 1(10), pp. 3–7084, 7093, R. 112]

20. A contract Edwards entered into with each Sealy licensee of Sugar Land prior to 1925 contained the statement that Edwards and his associates had been working for about seven years on a plan to organize a corporation to take over Sealy, "so that the name could be advertised and used for the benefit of all those manufacturers who hold license contracts, for the manufacture and sale of Sealy mattresses." [GX 2, pp. 3–7110, 7113, R. 124] The contract provided for the renewal of the Sealy licenses with the new corporation, for the election of Edwards as president, and for the licensees to receive three-fourths of the stock while Edwards and his associates received one-fourth of the stock of the new company "for his services in working out the plans for said organization, and promoting the same." [GX 2, p. 3–7114, R. 124]

21. The evidence indicates that E. E. Edwards was with the Sealy Mattress department of Sugar Land, and that he originated and promoted the idea of creating a separate corporation to own the Sealy name and intangible assets and to continue to license mattress companies to manufacture and sell Sealy bedding. The impetus for the organization of Sealy Corporation in 1925 came from E. E. Edwards, who stood to make a substantial profit from his 25% of

the stock if the new corporation were successful, and who had little or no personal liability if it were not.

22. Sealy Corporation was incorporated in Illinois in 1925; the incorporators and first formal Directors for purposes of incorporation were E. E. Edwards, who was elected president, Thomas H. Cobbs, the company's counsel, and William Hertz, an advertising man who became general manager in charge of the Chicago headquarters office. [GX 2A, pp. 3–7097–99, R. 151; GX 1(10), p. 3–7093, R. 112; GX 2, p. 3–7110, R. 124] The corporation proceeded with its plans as outlined above, with Edwards exercising his option and directing transfer of the intangible assets of Sealy Mattress Co. to Sealy Corporation in exchange for six promissory notes for $25,000 each from Sealy Corporation to Sugar Land. Stock in Sealy Corporation was issued as planned, and the stock was turned over to Sugar Land, along with a conditional reassignment of the assets, as security for the notes. [GX 2, pp. 3–7110, 7119, R. 124]

B. *Purposes of Sealy Corporation*

23. The "object for which it is formed" was announced in the Statement of Incorporation of Sealy Corporation, as required for incorporation. In addition to reciting purposes to manufacture and sell and advertise bedding and other goods, the statement of objects begins with these most pertinent purposes:

> "* * * to acquire, own, hold, use, buy, sell, lease, mortgage and otherwise deal in patents, trademarks, copyrights, tradenames, labels, brands, and all rights and interests therein; to license others to use, make, manufacture and sell merchandise under patents, trademarks, copyrights, tradenames, labels and brands. * * *" [GX 2A, p. 3–7098, R. 151]

24. At regular meetings of the Sealy licensees, first convened under Sugar Land's Sealy Mattress Co. and continued under the successor corporations, a number of subjects of legitimate interest to the licensees were discussed and put into practice. For example, at the same meeting in January 1925 at which Edwards and the licensees discussed the forthcoming incorporation of Sealy Corporation and the purchase of "Sealy" from Sugar Land, the following matters were considered: The possibility and advisability of arrangements to finance retail dealers; the specifications for composition of the filler material for mattresses; methods of grading cotton linters for purchase and use in mattresses, the trend of the market price of linters, and the appointment of a committee for joint purchasing of cotton linters; uniform methods of wrapping and packaging mattresses, and the testing of various types of cartons; uniform design and central purchasing of Sealy labels; group insurance for employees, viewing and purchasing metal beds manufactured for Sealy licensees under Sealy names by an outside manufacturer; development of improved Sealy bedsprings and of a new grade mattress; sales presentations by outside manufacturers of twine and machinery; and advertising and promotion, including a national advertising campaign, window displays, retention of display space in the Chicago Furniture Mart, and participation in national hotel exhibitions. [GX 1(10), R. 112]

25. Similar topics were considered at the next semiannual meeting of Sealy licensees, in June 1925, at which attorney Cobb reported that incorporation of Sealy Corporation had been completed and the stock issued; for example, the discussion concerned such matters as national magazine ads, joint purchasing, designs and specifications, promotional materials,

packaging, and infringement of the Sealy name by a non-licensee manufacturer located in Sealy, Texas. [GX 4(23), R. 157] This evidence negatives the existence in the origin of Sealy Corporation of a central conspiratorial purpose to divide the United States among competing mattress manufacturers.

26. Continuing to the time of the reorganization of Sealy in 1933, which will be described below, the same kinds of subjects principally engaged the interest and attention of Sealy Corporation and its licensees. For example, at the nineteenth semi-annual meeting of Sealy's executive committee in December 1932, at which there was discussion of the depression-caused financial difficulties of its licensees, and therefore, of Sealy Corporation, and of the possibility of a reorganization, there was also consideration of the following matters: The possibility of changing the royalty basis from licensees' sales to the circulation of national publications in licensees' territories, because, as one licensee put it, "the primary purpose of the organization is to secure national advertising, and that mainly is what each factory secures from the Sealy Corporation"; the desirability of signing enough licensees to operate Sealy factories in 47 cities because, as stated in the minutes, "it was unanimously conceded that the mattress business is very nearly a local business, and it is practically impossible for a foreign factory to go into a local territory and secure any profitable business"; proposed advertising expenditures; the desirability of Sealy employing sales managers and production engineers to visit licensees and consult with them about promotional and production ideas and problems; the semi-annual promotion and special promotional ideas; and joint purchasing. [GX 7(19), R. 165]

C. *Territorial Restrictions in Sealy Licenses*

27. There is no dispute over the fact that the Sealy licenses contain provisions assigning to each licensee an exclusive territory, in which Sealy agrees not to license any other person to manufacture or sell "Sealy products," and outside of which the licensee agrees not to manufacture or sell "Sealy products"; it is also undisputed that "Sealy products" include those manufactured according to Sealy specifications and sold with a Sealy label, and that there are no restrictions upon the areas where licensees can manufacture or sell their own-brand products as long as they are not passed off as Sealy products. [GX 1012–18, R. 2349, 2354; GX 1020–1106, R. 2354, 2358, 2360, 2361; see GX 74, pp. 3–1487–88, R. 509, and GX 75, p. 3–1482, R. 512, in which the Sealy Board of Directors, meeting in 1954, discussed the question of private brand sales in contiguous territories; then president E. H. Bergmann said that competition between Sealy products and licensees' private brands was permitted in the license contracts, expressly or by implication, and what was prohibited was "sale of private brand merchandise directly or indirectly, under the Sealy banner, or using the Sealy name or prestige in any way to merchandise or sell private brand merchandise."] A territorial provision like this has been in the Sealy licenses from the beginning of the licensing of the Sealy name and trademarks by Sugar Land Industries in the early 1920's.

28. The earliest territories were assigned on the basis of freight rates, with the boundary between any two licensees being the point at which the shipping cost from their factories became equal, so that farther shipment by either licensee would result in a higher shipping cost than a shipment to that location by the other licensee. A list in evidence entitled "Territory

Outline License Factories Per Contracts," with a 1925 date on it, shows the area covered out of each of twenty-six cities; the first city listed is typical of all of them, providing as follows:

> "RICHMOND, VIRGINIA: Richmond and all adjacent territory in every direction until Richmond railroad freight rates meet lower ones from Mebane, Louisville, Cincinnati, Pittsburgh and Baltimore." [GX 27, p. 3–7252, R. 250; see GX 4(23), p. 3–7128, R. 157, re the existence of 26 licensees]

Each of these cities appears in the record as a city where Sealy licensed a manufacturer. GX 27 also contains marginal dates in connection with some territories, some as early as April 1923. [pp. 3–7253, 7256]

D. *Disputes over Territorial Borders*

29. Border disputes arose almost immediately, and as early as April 1925, while Sealy Corporation was still being organized, a dispute between the Richmond and Atlanta licensees gave rise to an expression of sentiment at an Executive Committee meeting that boundaries should be made definite and not left to be determined by changing freight rates. [GX 21, p. 3–7020, R. 229] A motion that territories be permanently fixed was passed at the Sealy semi-annual meeting in June 1925, and at the meeting in January 1926 this was made firm by a motion that disputed territory boundaries be fixed according to first class freight rates on January 1, 1926, if no fixed boundary is specified in the license contract. [GX 4(23), p. 3–7126, R. 157; GX 11(28), p. 3–7135, R. 182; GX 26, p. 3–7040, R. 247; GX 13(31), p. 3–7161, R. 193, 195]

30. Disputes over boundaries were settled by Sealy Corporation, which had a contract containing territorial provisions with each licensee, and therefore,

could not disassociate itself from such disputes. However, in the settlement of such disputes Sealy encouraged discussions and negotiations among the licensees affected, so that there could be an attempt to reach amicable settlements. When a dispute reached the point at which Sealy had to decide the disagreement or interpret its contracts, then the licensees involved could not participate in Sealy's decision even if they were members of the Sealy Board of Directors or Executive Committee. For example, in a continuing boundary dispute between the Seattle, Washington, and Tigard, Oregon, licensees [GX 29, pp. 3–7046–47, R. 2541], the Sealy Executive Committee was unable to act at a 1927 meeting because the exclusion of Mr. Bowersox "by reason of his being a party to the contracts in question" resulted in the absence of a quorum; the matter, therefore, came before the January 1927 stockholders' meeting, and a decision was made to leave the two contracts in question unchanged. [GX 12(30), p. 3–7156, R. 187]

E. *Expansion by Sealy Corporation*

31. Sealy Corporation was not content to stop with the number of licensees secured by Edwards while he was with Sugar Land. On the contrary, specific plans were made to try to increase the number of licensees in order to fully cover all parts of the country, to increase the potential advertising budget, and to exploit the national advertising of the Sealy name and trademarks. In 1932 executives of Sealy were selected to work in various sections of the country, where they would visit prospective licensees to promote their acceptance of Sealy license contracts. [GX 7(19), pp. 3–7213, 7216–18, R. 165] This was not the kind of activity that could reasonably be expected of an organization formed or operated to divide the

country among a group of competitors, as Sealy is alleged to have been.

III. REORGANIZATION OF SEALY CORPORATION INTO SEALY, INCORPORATED

32. At the time of the Executive Committee meeting in December 1932, only eight Sealy licensees remained, presumably because of the business failures caused by the depression, and there was discussion of the financial difficulties of some former licensees and their indebtedness to Sealy Corporation. The evidence shows that Sealy Corporation defaulted on the notes payable to Sugar Land, and they were taken up by Sealy Mattress Company of Texas, E. E. Edwards' licensee company. [GX 7(19), pp. 3–7210–11, R. 165]

33. At the same meeting, the Executive Committee discussed reorganization of a company to succeed Sealy Corporation as owner of the Sealy name, trademarks, patents and good will originally purchased from Sugar Land. It was generally agreed that the basis for royalty payments by licensees should be changed from a per cent of sales to a pro rata amount of national advertising dependent upon the circulation of national publications in each licensee's territory. [GX 7(19), pp. 3–7211–12, 7214, 7215–17, R. 165]

34. At the Executive Committee meeting in July 1933, Edwards, as president of the practically defunct Sealy Corporation, was directed to proceed with incorporation of the new organization, to be known as Sealy, Incorporated. It was to be incorporated for $150,000, the amount paid to Sugar Land for the intangible Sealy assets. [GX 8(20), p. 3–7228, R. 173]

35. The incorporation was accomplished in August 1933 [GX 31A, R. 263], and Edwards was elected president of Sealy, Incorporated (the present defendant). [See GX 9, p. 3–7236, R. 174]

A. Purposes and Operations of Sealy, Inc.

36. After the reorganization in 1933, Sealy continued to operate much the same as it had prior to the reorganization. Some of the subjects discussed at the Sealy meeting in June 1936 were the following: Rewriting specifications of standard Sealy mattresses with respect to number of coils, type of cover, use of Sisal, etc.; preparation of mat books for distribution to licensees for advertising; and specifications and names of promotional pieces. The minutes of this meeting contain a reference to the election of H. E. Wolf to the presidency of Sealy, and the organization of the office of the corporation in Pittsburgh. [GX 31F(594), pp. 3–6653–54, 6657, 6662, R. 282]

37. At a meeting of the Sealy Board of Directors in November 1937, Earl Bergmann, then representative of the Cleveland licensee, stated that it was absolutely essential if Sealy were ever to have national significance for all Sealy plants to make the same merchandise and prove to dealers that they are offering a thoroughly uniform product. [GX 36(602), p. 3–6842, R. 321; GX 946, p. 3–1916, R. 2135; see also GX 593(31E, 32), p. 3–7248, R. 1359, in which it was decided at a Sealy meeting in July 1935 that the Sealy license contract would provide that each factory would manufacture Sealy products in strict accordance with specifications.]

38. In a "president's report" dated December 1939, H. E. Wolf cited what he considered some of the accomplishments during his presidency. He said that Sealy's first aim had been standardization, including

such elements as the trademarking of all important Sealy names, setting up complete specifications for Sealy products, development of standard forms to simplify reports to Sealy headquarters, furnishing definite cost figures and specifications for promotions, and furnishing specific instructions for production of items involving special manufacturing processes. Wolf further stated that Sealy had developed many sales features for its licensees, such as Nukraft, a product of the Goodrich Company made available to Sealy plants, the Duralife unit developed by the Pittsburgh licensee with extensive research by the Memphis licensee, and the Posture Pillow developed by the Sealy Executive Committee with experimentation at many Sealy plants, and with tests and research by Walter DeFries, Sealy's research engineer. Wolf mentioned the improvements in advertising and sales promotion, with the production of a catalog showing items of Sealy merchandise available throughout the country, the development of a mat portfolio containing a number of the most outstanding promotions developed by individual Sealy plants, creation of an effective newspaper institutional advertising campaign together with Sealy screen broadcasts, window displays and direct mail pieces, and the organization of a program of Sealy Sleep Shops. Wolf said that the licensees were well acquainted with Brody's work in connection with sales promotional efforts. He reported on Sealy's expansion in the areas of obtaining new licensees, securing the distribution of Firestone's Airtex, the availability of DeFries as research engineer, and expansion of Sealy's space at the American Furniture Mart in Chicago. In discussing future plans, Wolf proposed a more intensive advertising program, development of new bedding features, starting a strong campaign for hospital institutional busi-

ness, simplifying the Sealy line, an intensive membership drive to fill in all gaps in the present Sealy national picture, and the accomplishment of economies through standardized Sealy purchase of ticking, borders and similar items. [GX 46(945), p. 3–3221–26, R. 363]

39. In correspondence with W. J. Craig, a Sealy employee in the Chicago office, in November 1943, J. R. Haas, then president of Sealy, stated that he would not give the Chicago licensee or any other licensee permission to ship Sealy merchandise into unfilled territories without a definite agreement with the licensee that a specific royalty would be paid to Sealy for such shipments. He told Craig that if such service were rendered by any Sealy licensee, he wanted to be advised and to know that it was handled the way he wanted it handled, stating that as president of Sealy and, as such, the one responsible for its actions, he wanted to know what the corporation was doing. [GX 395, R. 1061; GX 396, R. 1059]

40. At a meeting of the Board of Directors in January 1951, then president Bergmann proposed a "Code of Sealy Ethics," which was adopted by the Board to be sent to Sealy licensees "for the purpose of establishing and maintaining friendly relationships between and among the contiguous Sealy plants." Some parts of the "Code" were restatements in layman's language of provisions in the license contracts. [GX 68(627), pp. 3–1653–54, R. 484; see, *e.g.*, GX 1056, p. 3–2187, R. 2358]

41. In January 1951, the Board of Directors established a procedure for "checking Sealy re-sale items manufactured by the plants for conformity to the specifications." This procedure involved the purchase of mattresses from retail stores in the franchised territory, which mattresses would then be exam-

ined to determine whether any licensee was violating Sealy's manufacturing specifications. If a violation was discovered, further purchases and examination would be made in the territory in question. Violations would be called to the attention of the Board of Directors. [GX 68(627), pp. 3–1651–52, R. 484] This procedure later came to be called the Vigilante Program, as noted in the minutes of meetings in 1954. [GX 638, p. 3–1508, R. 1491; GX 75, p. 3–1481, R. 512]

42. The president's annual report to the Sealy stockholders at the meeting in November 1953 did not even touch upon allocation of territories, but contained comments appropriate to a president's annual report to the shareholders of a corporation with regard to the following items: "Financial condition, income, net gains, dividends, sales, expansion of personnel, new national headquarters, Sealy Sleep Products, Ltd. [a Canadian corporation], legal matters, and prospects for the future of the organization." [GX 1011, p. 3–5533, R. 2342]

43. E. H. Bergmann, as president of Sealy, developed various committees composed of licensees and employees on the Sealy staff, which reported to the Executive Committee and Board of Directors, and which served to plan Sealy advertising, promotions, manufacturing specifications and general growth of Sealy. [See Section IIIB, *infra*] For example, at a meeting of the Board of Directors in April 1955, a number of questions arose with regard to various committees, as described in the following paragraphs. [GX 77 (642, 979), pp. 3–1436–56, R. 517]

44. At its April 1955 meeting, the Board reviewed the size of the Advertising Committee.

> "The president stated the primary reason for the size of this committee was to balance

it between plant representatives doing a large resale and those doing a large promotional business. Also, he felt it was necessary to bring in people who were deemed to be advertising minded and to train new members." [p. 3–1437]

Bergmann recommended that the full Advertising & Merchandising Committee should consist of the chairman of the Executive Committee plus six regional members. M. A. Kaplan, the Chicago licensee, expressed the view that the primary objective of the Advertising Committee was:

> "To prepare and guide advertising policies of Sealy with reference to the amount of money available for expenditure. He stated the job of the chairman in his opinion is to organize the meeting to promote creative thinking among members. * * *" [p. 3–1438]

Kaplan felt that the committee members "should be creative and have directive ability with national effort in mind rather than local effort." A motion was made and passed that the president select a chairman for the Advertising Committee and meet with the chairman to pick committee members, not to exceed five. [GX 77(642, 979), pp. 3–1437–38, R. 517]

45. At its April meeting, the Board received the report of the Planning and Expansion Committee, which had been created in January 1954. The report stated the responsibilities of the committee as outlined by E. H. Bergmann, as follows:

> "A. Study further requirements of Corporation and its Licensees.
>
> "B. Establish goal and set up program of procedure.
>
> "C. Recommend to the Board of Directors expansion of personnel deemed necessary to fill

requirements of the Corporation, or additional services to member Licensees." [p. 3–1446]

With respect to the Board of Directors, the committee said that it should at all times:

> "consist of capable, energetic, ambitious and sound thinking men, *who have the interests of Sealy, Inc., at heart,* and that *it is to the interest of Sealy, Inc.,* to use the talents and abilities of as many of its members as possible, therefore, the Board should be filled at all times with men of that caliber." (Emphasis added.) [p. 3–1448]

The committee commented that many trading areas were not producing the volume of Sealy business that could reasonably be expected and that the Board should find ways to correct this condition and bring all territories up to the reasonable par; in many instances, for example, the committee said that territories were entirely too far from the sources of supply, so that additional factories or warehouses should be established to serve those areas. [GX 77(642, 979), pp. 3–1446–51, R. 517]

46. In February 1956, a bulletin to the licensees asked for volunteers to serve on the Specification and Cost Committees. With regard to the Specification Committee, the bulletin indicated that a considerable amount of work would be involved because the specifications for the resale line were in need of a complete review and overhaul; the committee would also give attention to other bedding specifications required in Sealy's national work. [GX 777, R. 1771]

47. The type of functions performed by the Advertising & Merchandising Committee is shown in the minutes of the Committee meetings in December 1956 and January 1957. For example, the subjects considered at the December 1956 meeting included: Cleveland's merchandising plan for Anniversary Con.

sealy.beds; the Spring Posturepedic program; the 1957–1958 advertising budget; a retail salesman's incentive program for 1957; the January Market; a Posturepedic acetate folder; the semi-annual promotion, the Golden Sleep—1957; plans for a 1957 Holiday Special promotion; review of old TV film commercials; the question of Sealy paying for the preparation of ten-second television commercials; and the scheduling of another meeting to finalize plans for Spring Posturepedic and develop the program for the 1957 Golden Sleep promotion. [GX 662. p. 3-6200–05, R. 1576] At the meeting in January 1957, the Advertising & Merchandising Committee discussed principally the specific elements of the forthcoming promotions, the Spring Posturepedic and the Golden Sleep, including national magazine ads, window displays, sales portfolios, and similar promotional materials. [GX 664, p. 3–6212–17, R. 1593]

B. *Development of Sealy Staff*

48. At a meeting in November 1933, the Executive Committee agreed that it would be necessary to secure the services of some outstanding man in the mattress industry who would devote his time exclusively to Sealy—in other words, a full-time, professional executive, not associated with any of the licensees. [GX 9, p. 3–7236, R. 174]

49. At the Sealy meeting in August 1936, a number of advertising agencies made presentations for a Sealy advertising and promotion campaign, and one of them was selected "to handle Sealy advertising under the supervision of a Sealy advertising committee." A Mr. Handerson, identified as the advertising manager of the B. F. Goodrich Co., discussed joint and cooperative advertising between Sealy and Goodrich, which company was manufacturing the Nukraft pad

component for certain Sealy mattresses; Mr. Handerson indicated that he would be willing to act in an advisory capacity to the Sealy Advertising Committee. [GX 33(931), pp. 3–6685–87, R. 290]

50. At this same meeting in August 1936, H. E. Wolf, Sealy president, introduced Brody and Englehardt, who were interested in undertaking contact and general promotional work for Sealy. After they discussed their qualifications and the question of remuneration, they left the meeting, and the licensees discussed the relative merits of various persons who were being considered for this job. A motion was made and passed that the selection be left to president Wolf and E. H. Bergmann, a representative of the Cleveland licensee and secretary of Sealy. [GX 33 (931), pp. 3–6687–88, R. 290]

51. At an Executive Committee meeting in October 1936, there was a discussion of employment by Sealy of Brody and Englehardt, who would receive salary plus percentage of royalties paid by licensees, out of which they would pay the general administrative expenses of Sealy, including space in the Chicago Furniture Mart and the salary of a trained production man. Their remittance did not include advertising or advertising agency expenses. [GX 34, pp. 3–6697–98, R. 297]

52. The contract between Sealy and Brody and Englehardt was approved at an Executive Committee meeting in December 1936. Among other things, it provided that Brody and Englehardt would do the following: Consult with Sealy's advertising agency regarding preparation of effective advertising and sales promotion material; plan a program of organization for the purpose of securing additional licensees; contact manufacturers who were potential licensees and try to persuade them to sign a license contract

with Sealy; conduct an educational program as to the merits of Sealy products among the personnel of Sealy licensees and of Sealy retail dealers. [GX 932, pp. 3–6700, 6726, R. 2056]

53. At an Executive Committee meeting in January 1937, the secretary read suggested committee appointments, which were approved as read. The following committees were appointed: Advertising Advisory, Engineering, Styling, Merchandising, Cost and Accounting Practices, and Purchasing. [GX 933, p. 3–6760–61, R. 2081]

54. At the Board of Directors meeting in January 1937, president Wolf outlined the proposed committee set-ups recommended by the Executive Committee, and a motion was made and approved that "the selection of committees be left entirely in the hands of the President." [GX 934, p. 3–6762, R. 2083]

55. In November 1939, Sealy took permanent space in the American Furniture Mart in Chicago and moved its offices from Pittsburgh to Chicago. Brody was elected executive vice president of Sealy and was empowered to hire office assistants. [GX 45(613), pp. 3–3199–3200, R. 361]

56. In a "president's report" dated December 1939, H. E. Wolf made the following statements with respect to the use of committees to enhance the effectiveness of Sealy, Inc. and with respect to Brody's activities:

> "In order to assure all Sealy group members taking an active part in Sealy affairs, various Sealy committees were set up so that everyone could do his bit in some field, such as advertising, purchasing, etc. While some of these committees have not functioned as effectively as they might, the writer is sincerely hopeful that new appointments in this line will result

in the closest possible cooperation among Sealy group members.

"All of you are thoroughly acquainted with our various sales promotional effort during the past few years, and Mr. John M. Brody, Jr.'s work in this connection, and for this reason I am not going into detail about this matter." [GX 46(945), pp. 3-3223-24, R. 363]

57. Following World War II, at a Board of Directors meeting in 1945, J. R. Haas, then president of Sealy, "stated that he was in favor of training a man that might eventually become the head of Sealy, Incorporated." He had a man in mind and sought approval to hire him, but no vote was taken on the subject. [GX 956, p. 3-2050, R. 2155; see GX 957, p. 3-2058, R. 2157, in which J. R. Haas spoke at a licensee meeting "on the necessity for proper management and the need for additional top personnel."]

58. At the Board of Directors meeting in November 1950, Bergmann appointed the following standing committees: Advertising, Syndicate Selling, Grievance, and Merchandising and New Ideas. [GX 970, p. 3-1870, R. 2195] The make-up of the standing committees was somewhat different when Bergmann nominated them at the Board of Directors meeting in November 1951: Advertising, Specifications, Promotional Sales, New Ideas and Grievance. The Advertising Committee included, in addition to four licensees, the "Entire Staff" of Sealy. [GX 974, p. 3-1613, R. 2203] In what appears to be excerpts from an agenda for the Board meeting scheduled for April 1954, the 1954 committees are listed as follows: Advertising, Merchandising, Licensee Guidance & Advisory, Production & Cost, Promotional Sales, Specifications, (each committee listed above had as members one or more persons from the Sealy staff), Grievance, Markets, New Sale Ideas, Planning & Expansion,

Sales Managers and Upholstery. [GX 1005, p. 3–5366, R. 2318] The 1954 committee list was given to the Directors along with an outline of the functional responsibilities of each committee; the outline of responsibilities is not in evidence. [GX 638, p. 3–1508, R. 1491] The committees were not a great deal different in 1957; five of the seven committees included at least two members of the Sealy Staff. [GX 991E, p. 3–23, R. 2275][1]

59. At the meeting of the Board of Directors in April 1955, the Planning and Expansion Committee filed its report, which included the suggestion that all officers should be on the Sealy staff, as employees of Sealy, Inc. It also recommended that the president have his headquarters in Sealy's national office in Chicago. It recommended the addition to the Sealy staff of various sales and promotion members, as well as a Director of Sealy's Upholstery Division. After the report was submitted, a motion was made and passed that in the future all officers of Sealy were to be members of the Sealy staff. [GX 77(642, 979), pp. 3–1437–38, 1446–56, R. 517]

60. A list of employees of Sealy, Inc. from 1951 to the date of the list, shows that Sealy had a staff of twenty-three professional, technical and clerical persons in February 1957. [GX 991F, R. 2276]

C. *Ownership and Licensing of Trademarks*

61. In keeping with its purpose to own and license trademarks, copyrights, trade names, labels and

[1] Defendant's answer to plaintiff's Interrogratory 58 describes the activities and personnel of certain Sealy committees between 1957 and 1960 where, again, it is evident that members of the Sealy staff were active on these committees; several were chairmen of committees at least part of the time described. [GX 1113, Interrogatories 58, 62, pp. 58–1—58–8, 62–1—62–2, R. 2372]

brands, Sealy was continually interested in new names for its products. At the Executive Committee meeting in December 1936, plans were made for an immediate trademark search covering the ten standard Sealy names and for copyrighting the ten labels as soon as they became available. [GX 932, p. 3–6745, R. 2056]

62. At the Executive Committee meeting in January 1937, it was decided to trademark the name "Little Darling" for crib mattresses if it had not already been trademarked. [GX 933, p. 3–6760, R. 2081]

63. In November 1942, Mr. J. R. Haas was able to speak to the licensees about the progress of Sealy in its merchandising and in establishing and maintaining trademarks, all of which made possible an augmented advertising program for 1943. He also discussed the purchasing of cotton for the Sealy Tuftless mattress. [GX 950, p. 3–1952, R. 2141]

64. In 1956 a trademark search was made for Sealy's patent counsel on the trademark "Posture Perfect," and twenty-one references to similar terms used by other companies were found, mostly registered for use in Class 32, for mattresses. [GX 986, p. 3–1304–09, R. 2272]

65. GX 987 is a collection of Sealy trademarks registered between August 1918 and April 1956, inclusive. Thirty-three registered trademarks are included. The cover sheet indicates that these came from the files of Sealy's patent and trademark counsel. [GX 987, p. 3–35—67, R. 2272]

D. *Stock of Sealy, Inc.*

66. In 1936, E. E. Edwards left Sealy, selling his 325 shares of stock to Sealy for $9,750, or $30 per share; at the same time Sealy purchased 254 shares

of stock held by the Southern Commercial Corporation (formerly Sealy Mattress Co., Edwards' Texas licensee) for $7,620. [GX 932, p. 3–6726–27, R. 2056; see GX 34, p. 3–6693, R. 297]

67. At the stockholders meeting in November 1946, the Sealy stock was put on a 6% dividend basis. [GX 55, p. 3–2090, R. 419; see GX 60(961), p. 3–1693–94, R. 440; GX 962, p. 3–1696, R. 2166]

68. The Sealy stock was distributed in such a way that each licensee did not have an equal voice with each other licensee. For example, as of March 1947, U.S. Bedding Company, Sealy's Memphis licensee, owned 344 shares of the 790 shares of Sealy stock outstanding. At the same time, Seniel Ostrow, the Los Angeles licensee, owned 60 shares, and Ernest Wuliger, the Cleveland licensee had 77 shares, so that either of them could vote with the Memphis licensee to exercise voting control of Sealy. The Memphis licensee plus any two of a number of other licensees could similarly exercise voting control of Sealy. [GX 958, R. 2159]

69. At the stockholders meeting in November 1947, the by-laws were amended to provide that no licensee could own or control more than 38% of the common stock of Sealy. [GX 962, p. 3–1697, R. 2166]

70. At the Sealy meeting in July 1948, the president stated that "approximately ninety-eight (98) shares of stock of Sealy, Incorporated was available at $105.00 per share, it being pointed out that each licensee would be entitled to four shares." [GX 964, p. 3–1739, R. 2173]

71. At the Board of Directors meeting in November 1951, E. H. Bergmann "reported that he had requests for the purchase of common stock of Sealy, Incorporated by the following persons and corporations:" Brown Reliable Bedding Co., the Detroit li-

censee, 28 shares, and the president and secretary of this licensee, 50 shares each; the Chicago licensee, 50 shares; the Waterbury, Connecticut, licensee, 10 shares; and president Bergmann, 10 shares. A motion was made and passed authorizing Sealy to issue said shares at $100 per share. [GX 972(629), p. 3–1623, R. 2198]

72. In November 1951, there were 1,173 Sealy shares outstanding. The Memphis licensee still had the largest single block of stock—344 shares. At that time the Detroit licensee and several members of the family that controlled the Detroit licensee together owned 150 shares of Sealy stock, and the Chicago licensee owned 103 shares. Thus, these two licensees plus Memphis could exercise control of Sealy. [GX 973, p. 3–1615, R. 2203]

73. At the Board of Directors meeting in November 1952, E. H. Bergmann

> "stated that he had requests for additional purchases of Sealy, Incorporated stock at $100.00 per share. The requests were as follows: 50 shares by Mrs. Bertha Hartman, 5 shares by J. R. Lawrence, 25 shares by E. H. Bergmann, 10 shares by Sidney Sutherland, 10 shares by J. Rudick, 20 shares by the Waterbury Mattress Company, 3 shares by the Empire State Bedding Company, 25 shares by M. H. Yulman, and 21 shares by the Slumber Mattress Company."

A motion was made and passed that purchase of said shares be authorized. [GX 976 (70), p. 3–1576, R. 2207]

74. In the president's report to the stockholders of Sealy at the close of the fiscal year ended June 30, 1954, the following statement was made with regard to corporate organization:

"The corporation has an authorized capital of $250,000.00 consisting of 2,500 shares of common stock, of a par value of $100.00 per share. As of June 30, 1954, 2431 shares of this stock has been issued, of which 959 shares was classified as Treasury stock. Since June 30, 1954, all of the remaining 69 shares of unissued stock was sold. In addition 359 shares of the 959 shares of stock classified as Treasury stock was offered to stockholders on a pre-emptive basis. All of the stock so offered was purchased except 61 shares which was divided equally on a per plant basis. There remains, as of the date of this report, only 600 shares of Treasury stock which has not been offered for sale. The Board of Directors on September 20, 1954 passed a resolution that the remaining 600 shares of stock could only be sold on the basis of the pre-emptive rights of the then existing stockholders." [GX 1011, p. 3-5543, R. 2342]

75. By September 1956, at which time there were 1,900 shares of Sealy stock outstanding, the Memphis license had changed hands, and the new licensee, Slumber Products Co., had only 53 shares, no longer enough to control with another small group of shareholders. However, at this time the Detroit licensee interests owned 474 shares, which, for example, were sufficient when combined with the Kansas City and Chicago licensee interests and E. H. Bergmann to provide effective control of Sealy. A number of other small groupings could similarly control the corporation. [GX 985, p. 3-1347, R. 2238]

76. Sealy's accounting statement for the year ended June 30, 1956, shows 1,900 shares of stock issued and outstanding, and capital and surplus of $669,495. This means that the Sealy stock had increased in book value to approximately $352 per share. [GX 996, p. 3-2765, R. 2291]

77. At the meeting of the Board of Directors in November 1956, the Board was apprised of E. M. Wuliger's offer of $4,000 to Sidney Sutherland for the Sealy stock owned by him. (GX 985 shows 21 shares owned by Sidney Sutherland as of September 26, 1956.) On motion made and passed, it was resolved that:

> "the executive office be instructed to ascertain whether or not it would have any effect on the value of the stock if E. M. Wuliger purchased it, or if the corporation purchased it, and, assuming no change would result, and all things being equal, that E. M. Wuliger be allowed to purchase the stock rather than the corporation." [GX 984(82), p. 3–1351, R. 2232]

E. *Royalties by Licensees*

78. The earliest method by which Sealy obtained royalty income from its licensees was through the sale of the Sealy labels that were required to be affixed to all Sealy products. The price of the labels was determined by the values assigned for that purpose by Sealy to the various Sealy products to which the labels would be affixed. The license contract provided certain minimum considerations payable to Sealy each month in the event that the prescribed minimum amount was not paid to Sealy through the purchase of labels. [See, *e.g.*, GX 1016, pp. 3–3410–14, R. 2354.]

79. At an Executive Committee meeting in December 1936, in a discussion of the possibility of the Memphis licensee relinquishing certain territories, E. H. Bergmann stated that:

> "the only basis on which the territorial situations could be worked out, in all fairness to Sealy, Incorporated, was to set up a fair royalty return from each territory, either by warehouse or direct contact, live up to the expected returns or else yield the said territory to Sealy,

Incorporated for licensing.'" [GX 932, p. 3-6700, R. 2056]

80. Sealy's profit and loss statement for the period January 1, 1937, through November 30, 1937, shows royalties in the amount of $54,247.02. Sealy's profit and loss statement for the period July 1, 1937, to December 1, 1937, shows royalties in the amount of $25,659.60. [GX 940, pp. 3-6881-82, R. 2103]

81. Sealy maintained control over the amount of royalty payments it collected from its licensees. At the Board of Directors meeting in March 1945, Herbert J. Haas, Sealy's attorney, reported on the preparation of new license contracts, and a motion was made and seconded that:

> "the contracts might provide for the grant of permanent license to Licensees when authorized by the Board of Directors after a study of the record of the respective Licensee, but the permanent contracts should contain a provision that upon 90 days' notice from Sealy, Incorporated shall have the right to increase or decrease royalty payments, raise or lower minimums, and make such other changes in the contracts as Sealy, Incorporated shall deem necessary or expedient except that the territory provided in the license shall not be changed, and that no permanent license can be granted except by a vote of three-fourths of the Board of Directors." [GX 53, pp. 3-2020-21, R. 405]

82. The royalty payment was later changed to 3% of the licensee's gross sales up to a certain amount, then 2%, and then 1% as various sales plateaus were reached; the minimum monthly payment was retained as part of the royalty provision. The 3% royalty provision was in Sealy's standard contracts by 1950. [GX 1061, p. 3-2350-51, R. 2358; see also GX 58 (960), p. 3-1682, R. 428; GX 59, p. 3-1685, R. 437;

GX 60(961), p. 3–1694–95, R. 440; GX 61, p. 3–1706, R. 447; GX 62(619, 963), p. 3–1715, R. 450; see, *e.g.*, GX 1063, pp. 3–2374–75, R. 2358; GX 1064, pp. 3–2390–93, R. 2358; GX 1065, pp. 3–2409–13, R. 2360]

83. Sealy's gross royalty income for the years ending June 30, 1953 through 1956, appears in the record as follows: 1953—$766,501; 1954—$803,861; 1955—$977,721; 1956—$1,167,052. [GX 999A, p. 3–2800, R. 2299; GX 999, p. 3–2790, R. 2298; GX 998, p. 3–2780, R. 2295; GX 996, p. 3–2766, R. 2291]

IV. EVIDENCE SPECIFICALLY NEGATING THE TERRITORIAL CONSPIRACY ALLEGATIONS OF THE COMPLAINT

84. The preceding findings indicate the type of evidence in this record that demonstrates that there has never been a central conspiratorial purpose on the part of Sealy and its licensees to divide the United States into territories in which competitors would not compete. Their main purpose has been the proper exploitation of the Sealy name and trademarks by licensing bedding manufacturers to manufacture and sell Sealy products in exchange for royalties to Sealy. The fact remains that each licensee was restricted in the territory in which he could manufacture and sell Sealy products. However, the record shows that this restriction was imposed by Sealy and was also secondary, or ancillary, to the main purpose of Sealy's license contracts. The following findings are based upon the evidence specifically related to the territorial restrictions. They show, mostly by representative examples rather than a summary of all the evidence, that: The Sealy executive committee rejected a specific proposal to divide the country among Sealy licensees; Sealy continually sought new licensees to fill in uncovered territory; and licensees

relinquished territory that was not within their natural trading areas, so that it would be covered by other licensees, existing or new. These facts are incompatible with a finding that the Sealy licensees conspired to allocate territories among themselves.

85. An excellent example of the manner in which Sealy acted in its allocation of territories to licensees and in its continuing relationship with licensees is provided by plaintiff's evidence with respect to several states in the Southeastern part of the United States, namely, North and South Carolina,

[GX 33(931), p. 6679, R. 290; GX 34, p. 3–6698, R. 297; GX 932, p. 3–6700, R. 2056; GX 941, p. 3–6903, R. 2109; GX 942(40, 605), p. 3–6907, R. 2113; GX 42(610), pp. 3–3132, 3140, R. 345; GX 52, p. 3–1955–56, R. 398; GX 156, R. 600; GX 157, R. 601; GX 158, R. 602; GX 956, p. 3–2050, R. 2155; GX 159, R. 602; GX 59, p. 3–1685, R. 437; GX 60(961), p. 3–1693, R. 440; GX 61, p. 3–1709, R. 447; GX 160, R. 608; GX 161, R. 609; GX 62(619, 963), p. 3–1714, R. 450; GX 184, R. 662; GX 63, p. 3–1746, R. 454; GX 189, R. 673; GX 190, R. 675; GX 191, R. 677; GX 192, R. 679; GX 193, R. 681; GX 194, R. 683; GX 195, R. 687; GX 196, R. 689; GX 220, R. 747; GX 208, R. 718; GX 209, R. 721; GX 197, R. 694; GX 198, R. 696; GX 221, R. 750; GX 214, R. 733; GX 219, R. 736; GX 217, R. 742; GX 216, R. 739; GX 218, R. 744; GX 226, R. 763; GX 227, R. 766; GX 222, R. 753; GX 64, pp. 3–1818–19, R. 457; GX 228, R. 768; GX 229, R. 769; GX 211, R. 729; GX 224, R. 757; GX 225, R. 760; GX 199, R. 699; GX 200, R. 701; GX 201, R. 702; GX 624, pp. 3–1851–52, R. 1455; GX 625 (67), p. 3–1853, R. 1457; GX 632, p. 3–1585, R. 1477; GX 304, R. 898; GX 307, R. 903; GX 308, R. 906; GX 311, R. 910; GX 295—GX 316, GX 70(976), R. 495, R. 868–917; GX 80, p. 3–

1400, R. 534; GX 389, R. 1042; GX 390, R. 1046; GX 391, R. 1047; GX 392, R. 1049; GX 393, R. 1045; GX 394, R. 1055;

and Georgia and Florida,

GX 941, p. 3-6903, R. 2109; GX 942 (40, 605), p. 3-6907, R. 2113; GX 52, p. 3-1955, R. 398; GX 62 (619, 963), p. 3-1714, R. 450; GX 59, p. 3-1685, R. 437; GX 228, R. 768; GX 229, R. 769; GX 65, p. 3-1839, R. 464; GX 66, p. 3-1849, R. 474; GX 624, p. 3-1851, R. 1455; GX 300, R. 884; GX 300A, R. 887; GX 70 (976), p. 3-1575, R. 495; GX 337, R. 948; GX 339, R. 955; GX 342, R. 959; GX 343, R. 960; GX 344, R. 960; GX 1008, p. 3-5461, R. 2324; GX 386, R. 1039; GX 387, R. 1039; GX 81 (983) p. 3-1367, R. 537; GX 388, R. 1040; GX 382, R. 1026; GX 82 (984), pp. 3-1350-51, R. 541; GX 1107, R. 2381; GX 1115, R. 2379.

It clearly portrays Sealy's attempt to exploit its name and trademarks to the fullest extent by assigning territory to whatever bedding manufacturer is available which can do the best job for Sealy, whether such manufacturer is an existing licensee located near the open territory or a potential new licensee. In attempting to thoroughly cover the Southeastern states with Sealy distribution, Sealy obtained territory from old licensees, found new licensees, shifted territory among licensees, discontinued its contracts with some licensees, and finally found a satisfactory licensee for the Carolinas at Lexington, N.C., but never did, insofar as the record shows, settle on a suitable licensee for Georgia and Florida. This series of events negatives the contention that Sealy is a front for competitors who created it and use it to divide the United States among themselves to avoid competition.

A. *Rejection of Proposal to Divide United States Among Existing Licensees*

86. At the reorganization meeting of the Sealy Executive Committee in July 1933, H. E. Wolf proposed that the eight Sealy licensees then in existence divide the entire United States between them. According to the minutes, this was seriously considered and discussed at length, but rejected. The "vital thing in which each was more concerned was the raising of a large national advertising fund immediately." It was "unanimously agreed that a large number of new factories be brought into the Sealy Corporation," [GX 8(20), p. 3-7228, R. 173]. From that time forward, and up to the latest times covered by plaintiff's evidence, the record shows that Sealy continued to seek new licensees to fill in parts of the country not adequately served by existing licensees. It is obvious that an essential inducement to prospective licensees—to get them to undertake the obligations of a Sealy license—was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties.

B. *Sealy, Not Licensees, Granted Territories, Pursuant to Contract*

87. On February 15, 1950, J. R. Lawrence, of Sealy, wrote to the Cincinnati licensee about an agreement between the Cincinnati and Memphis licensees whereby Cincinnati took over, on a temporary trial basis, a portion of the Kentucky counties previously served by Memphis. Lawrence made it clear to the Cincinnati licensee that "the franchising of territories is an exclusive right that is the property of Sealy, Incorporated," and a licensee could not relicense territory to another plant. Lawrence further stated that

the Memphis licensee had released the territory in question to Sealy, which had begun negotiations with a prospective Kentucky licensee, so that the most that could be done by the Cincinnati licensee would be to serve the territory on a temporary basis. [GX 234, R. 781; see GX 233, R. 778]

88. With regard to confusion that arose between the Denver and California licensees as to the state of Nevada, it developed that the state was included in both licensees' contracts with Sealy. On February 16, 1950, J. R. Lawrence, of Sealy, wrote to Herbert Haas, Sealy's attorney, and stated that Earl Bergmann was going to write to the Denver licensee and advise it that if the state of Nevada was listed in its new contract, then, obviously, "it was an error as we cannot franchise territory we do not possess." [GX 176, R. 646]

C. *Release of Unused Territory for New Licensees and Temporary Service of Such Territory*

89. At the Sealy meeting in August 1936, there was a recommendation that Sealy licensees release territories available for new licensee prospects to provide for nationwide expansion, and that licensees no longer be permitted to subcontract portions of their territories. The reasons given were that this would assure additional revenue for Sealy, more equitably distribute the advertising burden and provide proper distribution to take advantage of national advertising. The reallotment of territories should be made, it was said, "either on the basis of population, or, to follow the natural, or normal, trading area surrounding a particular manufacturer in a particular locality." [GX 33(931), p. 6677, R. 290] A motion was made and passed that the licensees

"relinquish and release to Sealy, Incorporated territories other than those making up their normal trading area, that is, territories now being worked advantageously by the respective Sealy factories, and that Sealy, Incorporated be given the power to contract with manufacturers in these territories directly, thus eliminating the sub-manufacturer's contract forming a part of the present plan." [GX 33(931) p. 3-6679, R. 290]

Pursuant to the motion, various licensees in attendance expressed their willingness to release parts of their existing territories to Sealy. [GX 33(931), pp. 3-6677-80, R. 290]

90. At the Board meeting in June 1937, representatives of the B. F. Goodrich Company stated that they had experienced considerable difficulty in having Sealy mentioned frequently in Goodrich advertising "because Sealy does not have proper national distribution." [GX 937(597, 608), p. 3-6786, R. 2088; see GX 33(931), p. 3-6690, R. 290]

91. At the Executive Committee meeting in August 1937, E. H. Bergmann moved, and the motion was approved "that definite sales quotas be set up for the various Sealy territories, with the understanding that any plant failing to live up to its quota should be charged with that quota or forced to release the territory." These quotas were to be based upon "proper trading areas," and also on buying power per family or per capita within each territory. [GX 35(599), p. 3-6824, R. 310]

92. At an Executive Committee meeting in April 1938, president Wolf "outlined the territorial sacrifices made by various Sealy plants for the benefit of the Corporation." At this meeting the Memphis licensee ceded additional territory to Sealy. A motion was made and passed that: "All territory, once ceded

to the Corporation, is to be considered Corporation property, and that any such territory which becomes open due to a member leaving the group, or for some equally good reason, is to revert to the Corporation." The original owners of such territories were to receive "special permission by the Corporation" to serve such territories until such time as new licensees were appointed, "in order to keep the Sealy name alive" in otherwise open areas. The original owners would "be consulted when a new licensee is brought in and the territory re-aligned on the basis of the geographical position of the new licensee." [GX 40(605, 947), pp. 3-6906-08, R. 329; see GX 46(945), p. 3-3224, R. 363]

93. At an Executive Committee meeting in April 1940, it was decided that temporary licenses by Sealy to existing Sealy manufacturers for warehouse activities in open territories were granted upon the premise that such manufacturers would "fully service and fully advertise the name of Sealy in said territories or otherwise withdraw from the area." At this meeting, the Memphis licensee was authorized to temporarily service certain Indiana territories, and the Pittsburgh licensee, the Philadelphia territory, out of Indianapolis and Philadelphia warehouses, "until such time as more suitable factory connections can be made for Sealy." [GX 48(616), p. 3-1886-87, R. 370]

94. Between November 1949 and February 1950, Sealy corresponded with its Memphis and Cincinnati licensees with respect to certain territory the Memphis licensee was willing to surrender for coverage by the Cincinnati licensee and a proposed new Louisville licensee. In response to a question from Sealy as to the counties it anticipated continuing to work in Kentucky, the Memphis licensee wrote that "'we will be

willing to surrender everything in Kentucky other than the counties as indicated on this list and the town of Evansville, Indiana." [GX 230, R. 772–73; GX 231, R. 774; GX 232, R. 777; GX 233, R. 778; GX 234, R. 781] On February 22, 1951, the Memphis licensee wrote to Sealy, confirming the fact that it had surrendered Evansville, Indiana, to the Louisville plant. [GX 278, R. 839]

D. *Procurement of New Licensees*

95. In his "president's report," dated December 1939, H. E. Wolf, speaking about expansion, said that since his presidency, Sealy "has had the privilege of welcoming such members as the Barcalo Manufacturing Company, the Marquardt Company, the Fred G. Hodges Bedding Company, the Ingraham Manufacturing Company, and Osiason, Incorporated." [GX 46(945), p. 3–3224, R. 363]

96. At an Executive Committee meeting in July 1941, J. R. Haas discussed the procurement of new licensees, citing six new plants that would form a nucleus for ten plants contemplated to serve the northeastern Atlantic Seaboard area. He outlined the territory to be covered by four of the new licensees "as allotted by executive committee." [GX 51, p. 3–1914, R. 394]

97. On October 7, 1942, Brody wrote to J. R. Haas, then president of Sealy, to say that he had made a careful survey and sales analysis of all territories then open in the United States and Canada. He reviewed the open territory and outlined an expansion program and proposed a calendar for immediate and future Sealy development work. Brody stated the basis for a proposed new licensing of territories as follows:

> "Based upon population, buying power, trading areas and freight rates, I have divided this

open territory into areas each of which is suitable for the operation of an additional Sealy plant." [GX 110, p. 3–5017, R. 563]

98. During the years that followed, Sealy was constantly working to secure national distribution of Sealy products and the most effective coverage of all parts of the United States. Sometimes this would involve adding new licensees, while at other times, it meant that Sealy would re-allocate unused or released territory to existing licensees. For example, at the Executive Committee meeting in February 1943, the committee discussed new contracts for Richmond, Cincinnati, Bluefield and Atlanta, the possibility of expansion by the addition of plants in the Carolinas, New England, Upper New York State, Detroit and St. Paul, and the possibility of the Kansas City licensee relinquishing certain counties to the Des Moines licensee. [GX 52, pp. 3–1955–56, R. 398]

99. In May 1944, president Haas wrote to Brody asking for a list of the counties that go to the Buffalo territory, so that Haas could let the Pittsburgh licensee know what Haas (Sealy) was willing to do. [GX 148, R. 586] Haas repeated his request a week later and also asked for "a breakdown of all unsold territory" to have on file in Memphis. [GX 149, R. 586] On May 17, 1944, Brody sent Haas a list of counties in the Buffalo territory as it was "assigned by Sealy originally to the Otis Buffalo Company of Buffalo, New York, when they were under contract to Sealy." [GX 150, R. 586] On May 23, 1944, Brody sent Haas a "recapitulation of every open Sealy territory," including the following: Philadelphia territory; proposed Charlotte, N.C., territory; eastern New York State Sealy territory; proposed Oklahoma territory; Minneapolis, St. Paul territory; proposed Mexico territory; and four Canadian territories by Provinces instead of Counties. [GX 151, R. 587]

100. In a meeting in July 1947, the Board of Directors approved a contract with the U.S. Bedding Co., the Memphis licensee, for the Dallas, Texas, and Oklahoma territory. The Board also decided that the state of Arizona and the area around El Paso, Texas, should be combined as a separate territory. The Board also discussed an application for the Minneapolis territory and the fact that the Kansas City licensee had sold its bedding business to a new company, for which a contract was being prepared. [GX 58(960), pp. 3–1679–82, R. 428]

101. On September 21, 1948, J. R. Lawrence, of Sealy, wrote to Ross S. Rosenberg, Sanitary Bedding Co., St. Paul, Minnesota, advising him that the executive committee of Sealy had accepted his application for a franchise in the Minneapolis territory, and that his contract would start January 1, 1949, on a straight royalty basis. Lawrence outlined the territory allocated "under this franchise," calling attention to those counties around the borders of the territory, in states mostly within the territory, but which counties were already franchised to other Sealy licensees and were, therefore, excluded from this territory. [GX 186, R. 666]

102. On August , 1950, the Portland licensee wrote to Sealy, stating that it had been developing trade in the Alaskan Territory for several years since advised that it could do so by J. R. Haas; the licensee asked that this territory be added to its contract because "we are expending funds and efforts to develop the business in that territory." [GX 246, R. 806] On August 21, 1950, E. H. Bergmann responded to the Portland licensee and said that with Alaska seeking statehood, some day "it may, within itself, be able to support a full licenseeship possibly not without a plant but the status of a licenseeship

on the part of who ever may be handling it for Sealy." Bergmann said that the way to handle Alaska was to give the Portland licensee a separate contract for Alaska with a low minimum royalty for the first three years, and then determine the value of the territory when the contract comes up for renewal. [GX 247, R. 806; see GX 248, R. 807]

103. On January 16, 1951, the Richmond licensee wrote to J. R. Lawrence, acknowledging notice that the Maryland Bedding Company, Baltimore, Maryland, had taken on the Sealy franchise as of January 1, 1951. The Richmond licensee said:

> "Frankly, I am pleased that you have a licensee in Washington and Baltimore and I hope that they will do a good advertising business in this area. If so, they will eventually be helpful to the Richmond factory." [GX 266, R. 818]

104. At a meeting of the Board of Directors in March 1951, E. H. Bergmann introduced Irving Fisher of the Fisher Products Company, Chester, Pennsylvania, and stated that Fisher was seeking a license agreement in the Philadelphia area. J. R. Lawrence outlined "his negotiations with Mr. Fisher and a report of his trip to Chester, Pennsylvania. Mr. Fisher gave an outline of his intended handling of the Sealy franchise in that area and after answering questions of the Board members was excused from the meeting." A motion was made and passed that the Fisher Company be granted a contract for the Philadelphia area, "details in regard to territory arrangements, etc., be worked out by Sealy officials." [GX 69, pp. 3-1644-45, R. 490]

105. On March 27, 1951, E. H. Bergmann wrote to T. C. Engelhardt, the Reading, Pennsylvania, licensee, as follows:

"We have a licensee interested in taking on the Philadelphia territory and in order to round out a territory for him that will fit into his present operations it is going to be necessary for us to give him the county in New Jersey which embraces the City of Trenton from the present Passaic contract.

"In order that we may tie into this county correctly and give him a straight run to Trenton I want to include in his territory two counties which have been serviced by the Reading plant during the past. These two counties are Montgomery and Buck.

"I am pleased to have you tell me that you felt that it would be possible for this change in the territory to be worked out with Philadelphia and I would appreciate having you write me and advise me that you have no objection to the placing of these two counties in the new proposed Philadelphia licenseeship." [GX 279, R. 840]

E. H. Bergmann wrote to the Reading licensee again on April 13, 1951, repeating that:

"What I want to do is to give the entire Montgomery and Buck counties to Philadelphia so as to round out their territory and I wish you would govern yourself accordingly. I am quite sure that these few little towns will not make too much difference to you and it is going to make a tremendous difference to me and to Philadelphia to get them started with a full complement of territory." [GX 280, R. 842]

Sealy assigned certain additional counties to the Reading licensee, and on May 23, 1951, Bergmann wrote to Engelhardt, saying that he was happy to include these counties as part of the Reading territory, and Bergmann thought that they would "more than justify the exclusion of the few cities that you have covered in Montgomery and Bucks counties." [GX 281, R.

844] On May 7, 1951, Bergmann wrote to the Chester licensee, stating that he was "not in a position to guarantee to you that I can amend the contract at this time to include Montgomery and Buck counties." However, Bergmann said that he had written a letter to Reading calling that licensee's attention

> "to the fact that inasmuch as they have not objected to my letter to them stating that it was my desire to include these two counties in your contract that I assumed they were willing to cooperate and that I was issuing their new contract on that basis. I have every reason to believe that Ted Engelhardt is going to be perfectly willing to go along on that basis, but I don't want to definitely promise you the contract until I have his verbal or written okay." [GX 285, R. 850]

106. On July 10, 1953, J. R. Lawrence wrote to E. H. Bergmann regarding certain counties being added to the Reading and Pittsburgh contracts. Lawrence said

> "This takes care of all the open counties in Pennsylvania with the exception of Susquehanna. I believe it was your intention to have all the open counties covered by some plant, and I will appreciate it if you will let me know in whose area you would want Susquehanna. As I see the map, you have two possibilities, one the Rochester plant and the other the Reading plant." [GX 345, p. 3–5058, R. 960]

Bergmann responded on July 23, stating that Susquehanna should go in Ted Engelhardt's territory [Reading licensee]; Bergmann doubted whether the Rochester licensee would do much with that county because "it is quite a ways from their plant," and so he assigned it to the Reading territory. [GX 345, p. 3–5057, R. 960]

107. In September and October 1955, E. H. Bergmann corresponded with H. B. Fouts, the Des Moines licensee, regarding a request that Des Moines relinquish some territory to be combined with certain territory that would be relinquished by the Chicago licensee in order to work out a franchise for a Davenport company. Fouts stated that the Des Moines licensee would not consider giving up any part of its territory; he said that:

> "there was a time when we were not too interested in the city of Davenport itself, but times have changed, we have completely reorganized our sales force, and we have spent considerable time and money in Davenport and the adjoining territory. As a result, our business has improved greatly. That being the case, we would not for one minute even consider giving up Davenport to anyone, let alone a new licensee." [GX 377, R. 1016]

Fouts raised the question why the Davenport Bedding Company was suddenly interested in a Sealy franchise; and he suggested that the reason might be that the company was seeking the advantage of the name Sealy to help it sell private brand merchandise in contiguous territories. Bergmann responded that the matter was now closed, but in answer to Fouts' question, he said that he had been "trying to contact the Davenport Bedding Company in the right way for over six months. Actually we went to them, they did not seek a Sealy licenseeship." [GX 376, R. 1015; GX 377, R. 1016; GX 378, R. 1021]

108. In a letter to the Rochester, New York, licensee, dated May 11, 1956, E. H. Bergmann wrote about a discussion that had arisen at a Board meeting relating to the recommendations of a management consulting firm "concerning the realinement of territories in order to obtain complete coverage. It

was pointed out that many licensees are not exploiting all their territory, and an effort should be made to have them relinquish such territory that they are not utilizing to the fullest possible extent." The Board of Directors had decided that the Sealy executive office should:

> "Set up machinery to work with all licensees not presently achieving 80% of par in all major divisions of their territory in order to either (A. offer every assistance to such licensee to enable such licensee to bring about such better development,) or (B. obtain *voluntary relinquishment* of the undeveloped territory for realinement,) and (C. to make a semi-annual report to the Executive Committee of the Board disclosing the progress resulting from such efforts, and all legal steps be taken to continue and implement the program so as to bring about complete nationwide development)." [GX 383, R. 1028]

109. The position of Sealy vis-a-vis each licensee was further discussed in a letter from E. H. Bergmann to the Louisville licensee, dated June 4, 1956, relating to the possibility of certain territorial adjustments for the benefit of the Louisville licensee, which the licensee felt would also work to the advantage of Sealy. Mr. Bergmann stated that the licensee's request, which he was unable to grant, related to:

> "a subject of which this office is constantly aware, namely, the realinement of territories between contiguous plants for the over-all betterment of the national picture, the specific improvement of one plant, the avoidance of any harm or penalty to the plan being asked to cooperate with the national office in facing up to the realistic facts concerning sales performances.

"Unfortunately, all territories are under contract which requires voluntary acquiescence to any suggestions of relinement. This writer over a period of years has found this to be a most difficult problem. * * * We work constantly at the problem, and it is surprising how many little adjustments of a county or two are made each year because of the gentle negotiations going on at all times to improve the national position with no particular harm to any one individual operating unit." [GX 385, R. 1035; see also, GX 384, R. 1032]

E. *Termination of Licenses*

110. At the Board of Directors Meeting in November 1938, a letter from the Philadelphia licensee was read. A motion was made and passed that "Sealy cooperate with the Philadelphia plant, in view of their apparent sincerity, accepting their stock in part liquidation of their account, with a minimum of $100.00 per month subject to change upon notice by the Board with the understanding that a definite arrangement will be made by Philadelphia for paying up its arrears." At this meeting, president Wolf also informed the Board that "the St. Paul contract had been terminated, upon request of the St. Paul plant, and that this organization therefore was no longer part of the Sealy group." [GX 601, pp. 3-6957-58, R. 1391]

111. At a meeting of the Executive Committee in April 1940, a motion was made and passed that Sealy "accept cancellation of the contract between Sealy, Incorporated and the Sealy Mattress Company at Philadelphia, Pennsylvania." President Haas was instructed "to effect a settlement from Philadelphia to cover obligations due Sealy." [GX 48(615), pp. 3-1877-78, R. 370]

112. At a meeting of the Executive Committee in June 1940, president Haas notified the committee that he executed on behalf of Sealy "a termination of the contract between Sealy, Incorporated, and the Sealy Mattress Company of Tigard, Oregon, in line with the request of Mr. M. P. Cady of Tigard." All obligations of the Tigard licensee to Sealy had been settled in full. The termination was conditioned upon Sealy's acceptance as a licensee of the Pettit Feather Bedding Company of Portland, Oregon, which would absorb the Sealy Mattress Company of Tigard. At the same meeting, Haas notified the executive committee that he had executed a license contract between Sealy and Pettit. [GX 49, p. 3–1888, R. 383]

113. At the Executive Committee meeting in May 1947, the Milwaukee licensee announced that its stockholders had agreed to sell the company to the Sealy Mattress Company of Illinois, the Chicago licensee. A motion was made and passed, with M. A. Kaplan, of the Chicago licensee, not voting, that Sealy consent to a transfer of the Milwaukee franchise to the Chicago licensee. [GX 57(959), pp. 3–1673–74, R. 414]

114. At the meeting of the Executive Committee in May 1947, J. R. Haas "made a report regarding his negotiations with the Kansas City and Fall River Licensees. He stated that neither of the present Licensees were doing a first class job, and had given each of them until June 1, 1947, to make a showing, and if such showing was not satisfactory to him, he thought that new licensees should be appointed." A motion was made and passed authorizing Haas to handle the question of continuing these licensees or appointing new licensees. [GX 57, p. 3–1676, R. 414] At a meeting of the Board of Directors in July 1947,

J. M. Brody, speaking on Sealy sales and prospects, "called attention to the fact that Sealy had a new Licensee at Kansas City"; Brody spoke highly of the new licensee and said that he expected that Sealy would have a very strong situation in this territory. [GX 58(960), pp. 3–1679, 1682, R. 428]

115. At a meeting of the Board of Directors in June 1950, E. H. Bergmann reported that the Charles A. Maish Company of Cincinnati "had decided not to sign the agreement tendered to them at the direction of the last meeting of the Board and that the working arrangement with the Charles A. Maish Company would terminate on June 15." A motion was made and passed that the open territory be serviced by the neighboring plants "on a temporary basis until new licensees are located for the area." [GX 66, pp. 3–1849–50, R. 474; see also GX 250, R. 812, in which Sealy states, on November 8, 1950, that the Maish Company "has closed their plant because of labor and management difficulty;" see GX 245, R. 804; GX 250–65, R. 812, 817]

116. At a meeting of the Board of Directors in September 1950, the Board approved the minutes of the Executive Committee meeting of August 1950, except that the Board further discussed the franchise of the American Bedding Company of Charlotte, North Carolina. E. H. Bergmann gave the details concerning the change in ownership of the Charlotte licensee, and J. R. Lawrence provided information regarding sales figures and performance of the licensee. A motion was made and passed that the license contract be continued with the new owners. [GX 67 (625), p. 3–1853, R. 479]

117. At a meeting of the Board of Directors in September 1952, a discussion arose as to the renewal of the license contract of American Bedding Com-

pany, of Charlotte, North Carolina. W. L. Harris, of the Charlotte licensee, spoke about the accomplishments of his company under the Sealy franchise, answered questions pertaining to the management and operation of the company, and requested renewal of the contract. Harris was excused from the meeting, and a motion was made and passed that the manufacturing facilities and sales effort of the licensee were deemed inadequate, and the licensee was not entitled to a renewal. As required by the license contract, this motion received a two-thirds vote. The motion contained the following introductory clause:

> "from the report of the officers of Sealy, Incorporated it is apparent that the manufacturing facilities and sales effort of the American Bedding Company are insufficient to meet the requirements of Sealy, Incorporated in the territory covered by the license to the American Bedding Company, and that such manufacturing facilities and sales effort have not been improved during the license period, which began October 1, 1949, and ends September 30, 1952." [GX 632, pp. 3–1585–86, R. 1477]

118. At a meeting of the Board of Directors in November 1956, the Board was "appraised of the problems which had been encountered in connection with the Orlando plant, beginning in June, 1956, and continuing to their termination by purchase of the plant by the corporation on September 7, 1956." [GX 82(984), p. 3–1348, R. 541]

119. Plaintiff's evidence, read as a whole, conclusively proves that the Sealy licensing arrangements were developed in the early 1920's for entirely legitimate business purposes, including royalty income to Sugar Land Industries, which owned the Sealy name, trademarks and patents, and the benefits to licensees of joint purchasing, research, engineering, advertising

and merchandising. These objectives were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage.

V. RETAIL PRICE FIXING BY CO-CONSPIRATOR STOCKHOLDER-LICENSEES WITH SEALY, INC. AND ITS PREDECESSOR, SEALY CORPORATION

120. At the sixth semiannual general convention of the Sealy member factories in January 1925, the member factory representatives agreed upon and set the advertised retail price of two Sealy matresses (GX 10 [alias of GX 1]; Tr. 108–124, 181; Doc. 3–7091).

121. In January and June 1927, the stockholder-licensee representatives at the semiannual conventions of Sealy, Inc. discussed and agreed to maintain the resale price on the Sealy tuftless mattresses (GX 12–13; Tr. 187–190, 193–193; Doc. 3–7150, 3–7160).

122. Acting as the Executive Committee of Sealy Corporation in November 1927, the member factory representatives agreed upon the resale price for seven Sealy products (GX 14 [alias of GX 5]; Tr. 196; Doc. 3–7054).

123. At the eleventh semiannual convention of Sealy Corporation in January 1928, the twenty member factory representatives present decided upon the resale prices for seven Sealy products (GX 15 [alias of GX 6]; Tr. 203–204; Doc. 3–7169.

124. At the Sealy convention in January 1931, fourteen member factory representatives discussed and set the retail prices for various Sealy products (GX 17; Tr. 208–212; Doc. 3–7188, 3–7189).

125. Acting as the Executive Committee of Sealy Corporation, in December 1932, the stockholder-licensee representatives "agreed upon" and set the

resale prices for eight Sealy products (GX 19; Tr. 223–225; Doc. 3–7220 to 3–7222).

126. The Executive Committee of Sealy Corporation, consisting of the stockholder-licensee representatives, in July 1933, agreed that no cut prices were to be made on any of the articles advertised in national magazines. The minutes of the meeting interpret that agreement to mean that no cut price could be made without general authorization of the group and then only on a uniform basis throughout the United States (GX 20; Tr. 226–227; Doc. 3–7227 to 3–7229).

127. All of the stockholder-licensee representatives in July 1935 were of the decided opinion that uniform names and retail prices should be adopted, and therefore agreed upon uniform names and set uniform retail prices for various Sealy products (GX 593; Tr. 1359–1361; Doc. 3–7245).

128. Acting as the directors and officers of Sealy, Inc. in June 1936, the stockholder-licensee representatives unanimously agreed that $19.75 would be set as the lowest advertised retail price on any Sealy mattress (GX 594; Tr. 1361–1363).

129. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in March 1937 changed and placed into effect the resale prices on three Sealy products. At that meeting letters were read from the Houston and Los Angeles licensee-members requesting permission to offer Sealy innerspring mattresses at less than the minimum resale price ($19.75) established by Sealy, Inc. The stockholder-licensee representatives agreed that the Houston and Los Angeles licensee-members should be advised that Sealy could not make any exception to the general ruling (GX 595; Tr. 1366–1369; Doc. 3–6772, 3–6775).

130. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in May

1937, agreed that 125 percent would be the maximum markup on Sealy goods in place of the 100 percent markup previously set, this 125 percent markup to be based on the standard wholesale price. They further agreed "that all Sealy plants be compelled to adhere to *all established Sealy prices,* unless permission to the contrary was officially granted by Sealy, Incorporated" (emphasis supplied) (GX 596; Tr. 1373–1374; Doc. 3–6777, 3–6779).

131. The Executive Committee, comprised of the stockholder-licensee representatives, in May 1937 agreed that the Texas and Kansas City licensee-members be permitted to offer the Sealy tuftless mattress at $39.50 resale due to the conditions existent in those localities (GX 596; Tr. 1374; Doc. 3–6779).

132. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on July 1, 1937, agreed upon and set the minimum retail price on the Sealy tuftless mattress run singly or in combination with other items. They further agreed that the Sealy member factories should be permitted to run a special promotion during February and August if they so desired, during which the maximum markup would be increased to 160 percent instead of the usual 125 percent (GX 597; Tr. 1377; Doc. 3–6788, 3–6789).

133. At the meeting of the stockholder-licensees of Sealy, Inc. in July 1937, Mr. J. R. Haas, the Memphis stockholder-licensee representative and the vice president of Sealy, Inc. at that time, made the announcement that the Sealy tuftless mattress had been removed from the standard Sealy line and could be offered under a class label with the understanding that the resale price would not be less than $39.50 (GX 598; Tr. 1379; Doc. 3–6806).

134. At the August 1937 meeting of the Executive

Committee of Sealy, Inc., which committee consisted of stockholder-licensee representatives, Mr. John B. Brody made a presentation concerning the Crestline brand and a copy of his report was made a part of the minutes of the meeting. The report stated that upon the adoption by the Sealy stockholder-licensees of an off brand for merchandising by Sealy stockholder-licensees, Messrs. Brody and Englehardt would submit their recommendations for effective handling of this off brand for Executive Committee approval. Point 5 of the ten-point report is entitled "Control of Resale Prices." Under point 5, Messrs. Brody and Englehardt suggested that the control of the resale prices, as set by the stockholder-licensees of Sealy, Incorporated at the last national meeting, be established by the Executive Committee in line with the unanimous agreement of the stockholder-licensees. The control referred to is that of a limitation in markup on wholesale cost to a maximum figure of 200 percent. This recommendation was adopted by the stockholder-licensee representatives present (GX 599; Tr. 1384–1385; Doc. 3–6810, 3–6814 to 3–6819).

135. Acting as the Executive Committee, the stockholder-licensee representatives in August 1937 agreed that the Sealy tuftless mattress would be reinstated to the standard Sealy line with the understanding that the garnetted Tuftless could be sold at $39.50 under a class label, but the air woven Tuftless was to be sold under the standard label at $49.50 (GX 599; Tr. 1385–1386; Doc. 3–6820).

136. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in October 1937, agreed that a new mattress should be added to the Sealy line, with practically the same specifications as the Fast Asleep, and to sell at $19.75 resale, and that the Truease mattress would be sold at $24.75

retail (GX 600; Tr. 1389–1390; Doc. 3–6834, 3–6839).

137. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on November 12, 1937, agreed upon and set the price of the Sealy Tuftless mattress and further that the new Truease mattress would be made to the present specifications of the present Sleep Charm with this new Sealy Truease to retail at $24.75 (GX 602; Tr. 1395–1397; Doc. 3–6845).

138. The official rulings of the Executive Committee of Sealy, Inc., which was comprised of the stockholder-licensee representatives, for the year 1937, record that:

> (a) A new mattress was to be added to the Sealy line with Fastasleep specifications to sell at $19.75 resale;
>
> (b) The garnetted Tuftless was to retail at $39.50, the air woven Tuftless at $49.50, and the Sealy Tuftless was to be reinstated to standard Sealy line at $39.50; and
>
> (c) The name Sleep Joy was to be confined to the $39.50 bracket.

These official rulings were formally approved by the stockholder-licensee representatives at the Sealy annual meeting held on December 6, 1937 (GX 603, 604; Tr. 1398–1399, 1401; Doc. 3–6852, 3–6853, 3–6857).

139. At the meeting of the board of directors of Sealy, Inc. on November 4, 1938, the president, Harry E. Wolf, who was also a representative of the Pittsburgh stockholder-licensee, questioned the stockholder-licensee representatives comprising the board of directors as to their wishes with regard to the maintenance of a $19.75 Sealy minimum price and following considerable discussion, the matter was put to a vote. The majority of the stockholder-licensee representatives favored the retention of the minimum price. Facts presented at the stockholder-licensee meeting the following day also favored the re-

tention of the minimum price (GX 601; Tr. 1391–1392; Doc. 3–6955, 3–6956).

140. The minutes of the Sealy, Inc. Executive Committee meeting of April 26, 1938, record that stockholder-licensee representatives Louis Haas and Joe Rogers agreed to discontinue advertising the Sealy Rest at $39.50 and to replace all floor samples of the Sealy Rest with samples of the Sealy Kraft at $39.50 (GX 605; Tr. 1403–1404; Doc. 3–6914).

141. The stockholder-licensee representatives at the Executive Committee meeting on April 26, 1938, agreed upon and set the price for the Sealy Fast-asleep and agreed upon and set the new minimum price for Sealy products at $19.75 (GX 605; Tr. 1405; Doc. 3–6917).

142. At the meeting of the board of directors of Sealy, Inc., in June 1938, the stockholder-licensee representatives present heard the official rulings of the acting president and the Executive Committee. These rulings stated (1) the minimum Sealy price was then established at $19.75 instead of $19.95, (2) the new resale price of the Super Sealy Rest was then established at $49.50, (3) a slight variation was permissible in the wholesale price of promotional Sealy products but not in the resale price, (4) it was permissible for dealers to make an allowance on promotional products, such as a $5.00 trade-in allowance, provided the established $19.75 minimum retail price was maintained. The stockholder-licensee representatives changed the official ruling dealing with permissible allowances to provide that an allowance was permissible with the understanding the established $19.75 minimum retail price *must be* maintained (GX 606; Tr. 1408–1409; Doc. 3–6933, 3–6934, 3–6936).

143. The stockholder-licensee representatives, at the board of directors meeting in June 1938, decided

that the New York licensee-member and any other licensee-members desiring to do so would be granted permission to sell a Posture Pillow mattress with Nukraft center at a price of $39.50. They further agreed that the $19.75 minimum retail price would be retained (GX 606; Tr. 1410; Doc. 3–6946, 3–6948).

144. The stockholder-licensee representatives, at the meeting of the Executive Committee of Sealy, Inc. on November 9, 1938, agreed that the stockholder-licensees should be granted permission to manufacture the Super Sealy Rest in Posture Pillow design to retail at $49.50 (GX 607; Tr. 1412–1413; Doc. 3–6993).

145. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in November and December 1938, changed, agreed upon, and set the retail prices on various Sealy products (GX 609; Tr. 1418–1419; Doc. 3–7002, 3–7003).

146. The stockholder-licensee representatives at the meeting of the Executive Committee of Sealy, Inc. in January 1939, decided that on all future Sealy promotions a markup of 80 percent (40 percent on sales) must be maintained for the dealers (GX 610; Tr. 1420; Doc. 3–3138).

147. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in May 1939, decided that Sealy, Inc. would adopt a hair top mattress to be called "The Prize Winner" which would carry a comparative of $29.50 and would sell at $19.95. They further agreed upon and set a new minimum retail price on a particular Sealy mattress along with the plans for merchandising it (GX 611; Tr. 1422–1424; Doc. 3–3149 to 3–3152).

148. At the Sealy, Inc. stockholder-licensee meeting in May 1939, a change in policy with regard to Sealy's minimum resale prices was announced (GX 612; Tr. 1425–1426; Doc. 3–3167).

149. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc., in November 1939, decided that J. R. Haas, the Memphis stockholder-licensee, would prepare specifications for studio couches and bed divans for sale in suggested resale prices (GX 613; Tr. 1430; Doc. 3-3204).

150. The stockholder-licensee representatives, at the Sealy, Inc. Executive Committee meeting on April 26, 1940, unanimously agreed upon and set a new resale price for the Sealy Rest Mattress (GX 615; Tr. 1434-1435; Doc. 3-1882).

151. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in April 1940, gave consent to the Sealy Mattress Company of Memphis to sell Sealy mattresses to Montgomery Ward & Company within its own area, provided such sales made by Montgomery Ward & Company were handled through normal retail outlets at the agreed upon and set standard Sealy retail prices (GX 616; Tr. 1436; Doc. 3-1887).

152. The stockholder-licensee representatives, at the Sealy, Inc. Executive Committee meeting in February 1948, decided that two alternate names could be used by the Sealy stockholder-licensees for each of the regular resale mattresses subject to the provisions that:

(a) In no case could a Sealy item be advertised below $29.95;

(b) Under no circumstances was there to be any preticketing of the alternate name item by the stockholder-licensee; and

(c) Under no circumstances was the stockholder-licensee to allow a price comparative to be used by the retail advertisers.

They further agreed upon and set the suggested national resale price for the Cotton Boll innerspring

mattresses (GX 619; Tr. 1443–1444; Doc. 3–1713 to 3–1715).

153. At the meeting of the Sealy, Inc. Executive Committee in May 1949, the president, E. H. Bergmann, who was also the general manager of the Cleveland stockholder-licensee at that time, suggested a reduction in the minimum advertised retail price of Sealy merchandise. The committee agreed that the Sealy stockholder-licensees so desiring would be permitted to allow their dealers to advertise Sealy merchandise as low as $24.75 (GX 620; Tr. 1446–1447; Doc. 3–1805).

154. The stockholder-licensee representatives present at the Sealy, Inc. Executive Committee meeting in September 1949, adopted ticketing selections for the Sealy resale line and agreed upon and set the retail prices thereon (GX 621; Tr. 1448; Doc. 3–1817).

155. E. H. Bergmann, the president of Sealy, Inc., presented his thoughts concerning the establishment of a $39.50 rubber topper innnerspring promotion to the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in November 1949. The directors after detailed discussion decided to submit the idea to the stockholder-licensees at the annual meeting which was to be held immediately following the meeting of the board of directors (GX 622; Tr. 1451; Doc. 3–1827).

156. The stockholder-licensee representative acting as the Executive Committee of Sealy, Inc. in December 1949, after a general discussion on the establishment of minimum prices for Sealy sleep lounges, agreed upon and set the minimum resale price for Sealy sleep lounges (GX 623; Tr. 1453; Doc. 3–1832).

157. In August 1950, the stockholder-licensee representatives at a meeting of the Sealy, Inc. Executive

Committee decided after some discussion that new specifications should be issued for various Sealy products. They further agreed upon and set the retail prices for various other Sealy products (GX 624; Tr. 1455–1456; Doc. 3–1851).

158. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in September and November 1950 discussed the resale prices of Sealy mattresses and box springs, and agreed upon and set the resale prices for nationally advertised Sealy products. They further agreed in September 1950 that the individual stockholder-licensees could decide whether or not to establish the resale prices prior to the effective date (GX 625–626; Tr. 1458–1461; Doc. 3–1856, 3–1863).

159. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in January 1951 discussed the resale prices of Sealy items and agreed upon and set the resale prices on five Sealy products (GX 627; Tr. 1461–1463; Doc. 3–1653).

160. At the meeting of the Sealy, Inc. board of directors in September 1951, there was a general discussion on the national resale prices on Sealy mattresses and box springs. After various stockholder-licensee representatives gave their manufacturing costs on each item and after analyzing such costs, the stockholder-licensee representatives decided not to recommend a reduction in resale prices (GX 628; Tr. 1468–1469; Doc. 3–1629).

161. In November 1951, the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting discussed the advisability of retaining the present resale price of the Sealy Posturepedic Firm-O-Rest mattress. This matter was put to a vote by the stockholder-licensee representatives acting as the board of directors. After the vote, E. H. Bergmann,

the then president, stated that inasmuch as the majority of the board of directors favored the retention of the $79.50 price it would be so ordered. At the Sealy, Inc. stockholder-licensee meeting on November 11, 1951, this decision was announced (GX 629–630; Tr. 1470, 1472; Doc. 3–1611, 3–1621).

162. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in August 1952, reviewed the comparative sales figures of Posturepedic mattresses for the first half of 1951 and 1952 and decided to maintain the existing resale price of the Posturepedic mattress. They further decided to have Mr. Bergmann prepare a resolution for submission to the board of directors which would make it mandatory that all resale prices for the Posturepedic be the same at all points upon notice from Sealy (GX 631; Tr. 1474–1476; Doc. 3–1591, 3–1592).

163. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting on September 18, 1952, adopted the following resolution:

> Whereas compliance by licensees on all specifications established by the board of directors is the essence of the protection afforded by the trade marks of Sealy,
>
> Now therefore, be it resolved that the failure by any licensees to comply with each and every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, shall be deemed to be harmfully and injuriously damaging to the Sealy trademarks and to the products sold thereunder.

They further discussed the advisability of changing the resale price of the children's Pos repedic mattress and agreed that no change should be made. In October 1952, the resolution passed at this meeting was disseminated to the licensee-members through the

issuance of Sealy Policy Bulletin No. 12, dated October 7, 1952, which also contained the listing of the then established resale prices (GX 632, 743; Tr. 1478–1479, 1723–1725; Doc. 3–701, 3–1584, 3–1585).

164. The stockholder-licensee representatives, acting as the board of directors of Sealy, Inc. in January 1953, agreed upon and set the resale prices for various Sealy products (GX 633; Tr. 1483; Doc. 3–1556).

165. At the meeting of the board of directors of Sealy, Inc. held March 19, 1953, in Los Angeles, California, E. H. Bergmann, brought up the possibility of increasing the ending price of the resale brackets from 50 cents to 75 cents. The stockholder-licensee representatives present expressed their opinion and after discussion agreed that no change should be attempted (GX 634; Tr. 1484–1485; Doc. 3–1551).

166. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in March 1953, discussed the establishment of the Baby Posturepedic resale price and decided that the Baby Posturepedic should bear a retail tag of $19.95 without the contour sheet and $24.75 with the contour sheet. The decision was changed in June 1953 when the stockholder-licensee representatives acting as the Sealy, Inc. board of directors, unanimously agreed that the Baby Posturepedic should be sold at $24.75 retail, regardless of the type of plastic cover used with the mattress (GX 634–635; Tr. 1485, 1487; Doc. 3–1540, 3–1551).

167. In November 1953, the stockholder-licensee representatives, acting as the board of directors of Sealy, Inc., agreed that the five resale Con-Sealy beds as shown at the stockholder-licensee meeting should be adopted and agreed upon and set the retail prices thereon. They further agreed upon and set the minimum advertised prices of certain of these Sealy products (GX 636; Tr. 1488–1489; Doc. 3–1530.

168. At the meeting of the Sealy, Inc. board of directors on May 10, 1954, it was called to the attention of the stockholder-licensee representatives that there was a 50 cents differential in the retail price of the Posturepedic innerspring mattress and foundation set as compared to the Foam Rubber Posturepedic set. The stockholder-licensee representatives recommended, for the sake of uniformity, that the price of the Posturepedic Foam Rubber set should be the same as the Posturepedic innerspring set. They further expressed their opposition to dropping the Sealy Rest name to a $59.50 level (GX 639; Tr. 1494–1495; Doc. 3-1505, 3–1506).

169. The stockholder-licensee representatives at the Sealy, Inc. Executive Committee meeting on March 2, 1955, thoroughly reviewed the complete fair trade program as related to Sealy's national resale items. They decided that a definite fair trade program should be set up; that it should be submitted to the respective stockholder-licensees; and that the program would be sponsored by trade paper ads run by Sealy, Inc. They also reviewed the matter of minimum prices and agreed upon and set minimum prices for various Sealy products (GX 641; Tr. 1501–1502; Doc. 3–1458, 3–1459.)

170. The stockholder-licensee representatives, acting as the Sealy, Inc. board of directors in April 1955, reviewed the prices set at the Executive Committee meeting in March 1955 and agreed on the minimum prices set by the Executive Committee with the addition that the minimum price on the Con-Sealy bed with the Posturepedic mattress should be established at $199.50 (GX 642; Tr. 1503–1504; Doc. 3–1440).

171. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in August

1955, approved the creation of a Firm-O-Rest foam outfit to sell for $129.50; approved the creation of a Foam Rubber Anniversary outfit with the price per set to be $99.50; and approved an increase of $10.00 for each of the resale Redi-Bed and Con-Sealy beds (GX 643, Tr. 1507–1509; Doc. 3–1419, 3–1420).

172. At the Sealy, Inc. Executive Committee meeting in June 1956, the stockholder-licensee representatives adopted the following resolution:

> RESOLVED: That the general policy heretofore established by the Board of Directors, of limiting comparatives not to exceed one-third off, be abated for the 1957 Anniversary Program permitting promotion of a $69.50 item at a sale price of $44.50.

After a lengthy discussion as to whether or not this $44.50 price was sound, those present agreed that the price of $44.50 should be set (GX 646; Tr. 1516–1517; Doc. 3–1371).

173. In August 1956, the stockholder-licensee representatives, acting as the Sealy, Inc. board of directors, agreed that no price comparison should ever be used on the Posturepedic. They further agree to maintain the existing resale prices on Sealy mattresses and foundations (GX 647; Tr. 1519–1520; Doc. 3–1359, 3–1360).

174. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in January and February 1957, agreed upon and set the minimum prices on various Sealy products. They further agreed after discussion that 125 percent of the invoiced wholesale price be the maximum markup allowed for preticketed non-promotional items (GX 648; Tr. 1521; Doc. 3–1337).

175. From time to time the stockholder-licensee representatives served on the Advertising and Mer-

chandising Committee of Sealy, Inc. and the Upholstery Committee of Sealy, Inc. These committees discussed and made recommendations as to (a) the retail prices to be set on Sealy products, (b) the minimum retail prices to be used on Sealy products, (c) the advertising and merchandising of those products, (d) the various promotions to be run on Sealy products and the retail prices to be in effect during those promotions, and (e) new products to be manufactured and promoted by the stockholder-licensees (GX 651, 653–656, 658–659, 664–665; Tr. 1532, 1539, 1542–1543, 1546–1547, 1551–1552, 1559–1562, 1564–1565, 1593, 1595–1596).

176. The minutes of the meeting of the Sales Managers Committee of Sealy, Inc. held May 3, 1956, attended by the stockholder-licensee representatives from Baltimore, Cleveland, Detroit, Des Moines, and Chicago, and two members of the staff of Sealy, Inc., record (a) a suggestion that they lower the quality of their $39.95 mattress, raise the price of their $39.95 specifications to $44.50, advertise both in the ad, and they did not favor the idea; (b) they felt it was absolutely necessary to raise the retail price of the 1957 anniversary promotion to $44.50 or $44.95; (c) a suggestion that they take a $69.50 resale number, such as the Sealy Rest or Sleep Joy, and reduce it to $44.50; and (d) that the reduction referred to in (c) above would have to be approved by the board of directors before such a plan could be finalized (GX 657; Tr. 1554–1556; Doc. 3–6098, 3–6099).

177. A few days prior to February 13, 1953, Sealy, Inc. issued a bulletin to all the stockholder-licensees stating that the resale prices of the Sealy resale line would move from the 50 cent bracket to the 75 cent bracket. On February 13, 1953, Sealy, Inc. issued a bulletin to all stockholder-licensees countermanding

this previous bulletin, as the stockholder-licensee representatives comprising the board of directors had not officially approved the change. This later bulletin stated that the only change in the Sealy resale line agreed upon by the stockholder-licensee representatives on the board of directors is the change in the Sleep Charm price (GX 666; Tr. 1598; Doc. 3–3581).

178. In August 1953, the Chicago stockholder-licensee informed Sealy, Inc. that the Chicago stockholder-licensee was agreeable to selling Gamble-Skogmo Company resale goods based on Gamble-Skogmo Company's agreement to maintain the resale prices on those resale goods (GX 668; Tr. 1599–1600; Doc. 3–3577).

179. In January 1954, the Waterbury stockholder-licensee wrote Sealy, Inc. that since the Waterbury stockholder-licensee had voted for the $199.50 minimum price on Con-Sealy beds, he was happy to receive the Sealy, Inc. bulletin stating that the resale price for the Con-Sealy beds had been set at $199.50. He went on to ask Sealy, Inc. if it were permissible to sell the love seat size Con-Sealy bed at $189.50, thereby maintaining his customary $10.00 differential between the full size and the love seat size as did his competitor Simmons. E. H. Bergmann, writing for Sealy, Inc., replied that Simmons recognized the $10.00 difference in the two sizes and he could "see no reason why we should not do the same also." Mr. Bergmann further stated that he felt the bulletins on minimum resale prices should be revised and he hoped within a short time to send a bulletin to the stockholder-licensee representatives comprising the Executive Committee and elicit their opinion as to the correct minimum prices on all items (GX 669–670; Tr. 1601–1604; Doc. 3–3526, 3–3527).

180. In February 1954, the Chicago stockholder-licensee wrote Mr. Bergmann, the president of Sealy, Inc., that he had mailed a Sealy bulletin, "SP–2," to Roger Lawrence, the executive vice president of Sealy, Inc., but had requested Mr. Lawrence to delay the mailing of the bulletin to the stockholder-licensees until Mr. Bergmann could check with the Executive Committee to see if the $199.50 price for the full size Con-Sealy bed included the Sealy Posturepedic quality mattress because the Chicago stockholder-licensee felt quite certain that it was the consensus of opinion that the Posturepedic mattress be excluded at the $199.50 price. Mr. Bergmann replied (1) that he understood the stockholder-licensee representatives at the board of directors meeting on November 16 had agreed that the minimum price of the Con-Sealy bed was to be $179.50 with a Posturepedic mattress; (2) that a bulletin had been issued to the stockholder-licensee as to their desires of $179.50 or $199.50 and that the vote had been sixteen to three in favor of the $199.50 price; and (3) that he, Mr. Bergmann, would ask each stockholder-licensee member of the Executive Committee to write him as to his wishes and he would be governed by the majority (GX 671–672; Tr. 1605–1606; Doc. 3–3528, 3–3529).

181. In April 1954, E. H. Bergmann, president of Sealy, Inc., requested the Chicago stockholder-licensee to inform him, Bergmann, of his reaction to the difference of 50 cents ($159.00 or $159.50) in the set price between the regular innerspring and foam rubber Posturepedic sets as Bergmann had already heard from three other stockholder-licensee members of the Executive Committee as to this question (GX 675; Tr. 1612; Doc. 3–3677).

182. In March 1955, the president of Sealy, Inc., Mr. Bergmann, wrote the Cleveland stockholder-

licensee that by going back through the minutes of the board of directors meetings until January 1953, he had found that the stockholder-licensee representatives comprising the board of directors had ruled that the prices of the Baby Posturepedic mattress should be $24.95 including the plastic cover and without the cover it could be advertised at $5.00 less, or $19.95, and that they had further ruled that a price of $29.95 should be established for the Youth Posturepedic mattress (GX 679; Tr. 1619–1620; Doc. 3–3576).

183. In June 1955, Sealy, Inc. issued Sealy Bulletin No. 2, revised as of June 30, 1955, to all stockholder-licensees specifying the minimum price at which Sealy merchandise could be advertised at retail. In response to this bulletin, the Baltimore and Schenectady stockholder-licensees wrote Sealy, Inc. questioning the accuracy of the price of Hollywood sets. In August 1955, Mr. Bergmann, president of Sealy, Inc., wrote to five stockholder-licensees on the board of directors asking them to indicate the changes to be made in Sealy Bulletin No. 2. Bergmann stated that upon receipt of the information the bulletin would be revised according to the opinion of the majority. The stockholder-licensee in Chicago, Mr. Kaplan, replied that it was his understanding that the twin or full size sets could be *sold* at not less than $49.50, that the minimum price was $59.50 if the headboard was included, and that if the headboard was advertised separately, the $49.50 minimum price was to be maintained. The stockholder-licensee in Waterbury, Mr. Walzer, replied that he believed the minimum price on a Hollywood outfit was $59.50 (GX 685–686, 688–690; Tr. 1629–1631, 1633–1635, 1637–1638; Doc. 3–3493 to 3–3495, 3–3499, 3–3500).

184. In May 1954, Mr. Bergmann, for Sealy, Inc., wrote the Kansas City stockholder-licensee that he

had had the price of the Posturepedic foam rubber set under discussion with the Executive Committee of Sealy, Inc. which consisted of six stockholder-licensee representatives and they were exactly divided fifty-fifty, as to whether it should be $159.00 or $159.50 per set. Bergmann further stated that he would issue further ruling based on the vote of the stockholder-licensee representatives meeting as the full board of directors of Sealy, Inc. on May 10 (GX 691; Tr. 1640–1641; Doc. 3–3516).

185. In August 1955, E. H. Bergmann, the president of Sealy, Inc., wrote to the stockholder-licensee representatives on the board of directors eliciting their preferences on a new resale price for the Posturepedic foam rubber mattress in an effort to arrive at a quick decision. The ten stockholder-licensees so polled, responded by letter or telegram giving preferences for resale prices. Sealy, Inc. issued Bulletin No. 114 dated August 16, 1955 to all Sealy licensee-members notifying them that the poll of the directors had indicated a large majority were desirous of increasing the retail price of the Posturepedic foam rubber set to $169.50, and requested the licensee-members to advise their dealers of the increase effective August 16, 1955 (GX 692–700, 702–704; Tr. 1641–1647, 1650–1664; Doc. 3–3481 to 3–3490, 3–3492).

186. In March 1956, the Baltimore stockholder-licensee wrote Mr. Bergmann at Sealy, Inc., that his sales of the Posturepedic foam rubber sets had decreased 70 percent since the resale price was raised to $169.50. The Baltimore stockholder-licensee further stated that he hoped to see Baltimore and Sealy, Inc. do something about this just as soon as possible. Mr. Bergmann, president of Sealy, Inc., replied that further action could be considered when the matter be-

came a little more clear (GX 705–706; Tr. 1665–1668; Doc. 3–3446, 3–3447).

187. In May 1956, the Chester stockholder-licensee wrote to E. H. Bergmann at Sealy, Inc. that there should be a quick reversion to the $159.50 resale price on the Posturepedic foam rubber mattress and that immediate remedial steps should be taken if it is deemed advisable by a majority of the licensee-members. Bergmann, for Sealy, Inc., replied that the stockholder-licensee representatives comprising the Executive Committee were unanimous in feeling that it was not necessary at that time to reduce the $159.50 price (GX 707–708; Tr. 1669–1672; Doc. 3–3450, 3–3451).

188. In April 1955, the Rochester stockholder-licensee wrote Sealy, Inc. asking if a Sealy button free mattress could be advertised at $39.50. Mr. Bergmann, president of Sealy, Inc., replied that it could be advertised at that price (GX 710–711; Tr. 1674–1675; Doc. 3–3474, 3–3475).

189. E. H. Bergmann, president of Sealy, Inc., in May 1956, congratulated the Detroit stockholder-licensee for the latter's general mailing to dealers in which the Detroit stockholder-licensee had listed regulations for Sealy approved retail advertising minimums. These regulations provided as follows:

> (a) No innerspring mattress or box spring regardless of exterior finish may be advertised for less than $29.50;
>
> (b) Full size or twin size Hollywood bed outfits (headboard, mattress, box spring or foundation, legs or carrying frames) may not be advertised at less than $59.50 for the complete set;
>
> (c) Redi-Bed sleepers may not be advertised at less than $159.50;
>
> (d) Con-Sealy bed sleepers may not be advertised at less than $199.50;

(e) All resale mattresses and dual sleepers, such as Con-Sealy beds, Posturepedic, Sunspun, Sealy Rest, Firm-O-Rest, Good Homekeeper, and Sleep Charm, may never be advertised for less than the pre-ticketed price for any reason whatsoever;

(f) All other promotional merchandise carrying a maximum comparative not to exceed one-third off the retail price;

(g) The word advertising as applied to the above regulations covers all display and classified linear newspaper advertising, circulars, radio, television, window and wall signs.

The Detroit stockholder-licensee further informed its dealers by a letter dated May 1, 1956, that he "will not be able to service dealers who do not conform to these retail advertising regulations" (GX 712–714; Tr. 1676–1683; Doc. 3–3471, 3–3472, 3–3652, 3–3653).

190. The Memphis stockholder-licensee in May 1956, wrote the Sealy, Inc. president, Mr. Bergmann, that he felt that "a minimum resale price of $39.95 each on a Sealy mattress or box spring should be adhered to" and "on ensembles the minimum price should be $59.95" (GX 715; Tr. 1683–1684; Doc. 3–3654, 3–3655).

191. In August 1956, several stockholder-licensees wrote to Mr. Bergmann, president of Sealy, Inc., expressing their views in regard to the increase in resale prices made by Sealy's competitor Simmons, and their views as to whether Sealy, Inc. ought to raise or maintain the retail price of Sealy Posturepedic mattresses at $79.50. A meeting of the stockholder-licensee representatives comprising the Executive Committee was called and the decision was reached that the $79.50 price of the posturepedic mattress would be maintained. The Orlando licensee-member in October 1956 sent Sealy, Inc. a copy of

its price list and a covering letter which had been mailed to its dealers. The accompanying letter dated October 15, 1956, and addressed to all Sealy dealers, stated that the Orlando licensee-member had concluded that the retail price lines could not be justifiably increased at that time and that he was maintaining the prevailing retail prices. The price list, effective October 15, 1956, specified the resale price of forty Sealy products. The prices on fourteen comparable Sealy products in this list were identical with the resale prices in the Baltimore and Richmond licensee-members' January 15, 1957, price list (GX 724, 726–730, 734–737; Tr. 1692, 1694–1698, 1702–1703, 1711–1716; Doc. 3–3467 to 3–3470, 3–3549, 3–3550).

192. In October 1956, the Schenectady member factory issued specifications for the 76th anniversary sale magazine advertising which stated that the Sealy Natural Rest would be featured and sold at a price of $39.95. In November 1956, Sealy, Inc. sent a "Smart Living Folder" to the licensee members which included a letter signed "Sealy Mattress Companies" to the Smart Living stores containing specifications for the same sale. These specifications provided that the Sealy Natural Rest mattress could not be advertised or sold for less than $39.95. Also included in the folder was a letter signed "Sealy Mattress Companies," written by Gerald C. Shappell, to the Emerson Press submitting specifications for the mailing prices for the 76th anniversary sale, which provided that the Sealy Natural Rest mattress and box spring would be nationally advertised for $39.95 but could not be advertised or *sold* for *less* than $39.95 (GX 731–733; Tr. 1704–1705, 1707–1709; Doc. 3–3537, 3–3544, 3–3545).

193. By stipulation at the present time, the stockholder-licensee representatives are continuing to meet

as the board of directors, the Executive Committee, or other committees of Sealy, Inc. and discuss, agree upon and set

(a) The retail prices at which Sealy products could be sold;

(b) The retail prices at which Sealy products could be advertised;

(c) The comparative retail prices at which the stockholder-licensees and the Sealy retailers could advertise Sealy products;

(d) The minimum retail prices below which Sealy products could not be advertised;

(e) The minimum retail prices below which Sealy products could not be sold; and

(f) The means of inducing and enforcing retailers to adhere to these agreed upon and set prices.

VI. DISSEMINATION TO STOCKHOLDER-LICENSEES OF SEALY BOARD OF DIRECTORS AND SEALY EXECUTIVE COMMITTEE DECISIONS

194. E. H. Bergmann, president of Sealy, Inc., prepared and sent to all stockholder-licensee members Sealy Policy Bulletin No. 11, dated August 8, 1952, which informed them that the stockholder-licensee representatives constituting the board of directors had agreed that extra length bedding of 78 inches and 82 inches, on all tufted resale mattresses from $49.50 through $79.50, including the Posturepedic mattress, all companion box springs and foundations, were to be *sold* for the same price as the regular length of 75 inches. This bulletin was revised and reissued in April 1955 (GX 742, 758; Tr. 1721–1722, 1750; Doc. 3–703).

195. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Sealy Policy Bulletin No. 7 to the licensee-members, which informed them that no price below $29.50 was authorized on any Sealy

mattress and all trade-in sales were prohibited. This bulletin superseded previous SP–7 bulletins of March, June, and December 1952, May 1954, and June 1955. In February 1953, Sealy, Inc. issued Revised Bulletin SP–14 to all licensee-members informing them that the stockholder-licensee representatives constituting the board of directors had changed, agreed upon and set the price of the Sleep Charm at $39.95 (GX 770, 772, 746; Tr. 1733, 1764–1765; Doc. 3–698, 3–715, 3–716).

196. In November 1954, Sealy Policy Bulletin No. 22 was issued to all licensee-members informing them of the various minimum prices at which their dealers could advertise Sealy merchandise and instructing them that all violations had to be called to the retail dealer's attention (GX 756; Tr. 1736–1737; Doc. 3–5523).

197. In January 1955, revised Sealy Policy Bulletin No. 4 was issued to all licensee-members. This bulletin stressed that if an item was pre-ticketed as to its value, the pre-ticketed price could not be reduced except upon specific directions of Sealy, Inc., nor could resale items in the national resale line be reduced in price at any time without the specific authority of Sealy, Inc. The bulletin then specified the resale price of eighteen different Sealy products in the national resale line and seven different products in the alternate resale line (GX 757; Tr. 1741–1745; Doc. 3–727, 3–728, 3–729).

198. In February 1957, Sealy, Inc. issued a revised Sealy Policy Bulletin No. 2 to all licensee-members on the subject of minimum retail prices, supplementing prior bulletins of January and February 1954, and April, May, June, and August 1955. This bulletin informed the members that the stockholder-licensee representatives acting as the board of directors had

agreed upon and set the prices below which Sealy products could not be advertised or sold and the bulletin further listed the specific minimum prices for the various Sealy products as approved by the stockholder-licensee representatives acting as the Executive Committee in January 1957 (GX 775; Tr. 1766–1768; Doc. 3–735, 3–736).

199. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Sealy Policy Bulletin No. 23 to all Sealy stockholder-licensees setting forth regulations controlling the sale of Con-Sealy beds, Redi beds, and Sealy resale beds and the minimum prices of these products. This bulletin superseded prior SP–23 bulletins issued in November 1954 and May 1955 (GX 769; Tr. 1759–1762; Doc. 3–678, 3–681 to 3–683).

200. In June 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletin No. 62 to all stockholder-licensee members informing them of the specifications for the Smart Living stores promotion and stressing the suggested resale prices to be in effect. The bulletin also lists in excess of 118 associated stores, by name and address, in seventeen different States which were to participate in the promotion (GX 779; Tr. 1776–1777; Doc. 3–860 to 3–868).

201. In August 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Bulletin No. 65 to all licensee-members informing them that the stockholder-licensee representatives serving as the Advertising and Merchandising Committee had agreed upon and set the suggested resale prices for Sealy king size sets and the prices so agreed upon and set (GX 780; Tr. 1777–1778; Doc. 3–871).

202. Sealy, Inc., over the signature of E. H. Bergmann, issued to all licensee-members Bulletin No. 67, dated August 23, 1956, on the subject of "Price Position" and solicited from the licensee-members any

suggestions and observations on the subject of price which they might have had (GX 781; Tr. 1779–1780; Doc. 3–874).

203. Sealy, Inc. issued Bulletin No. 69 in August 1956, over the signature of E. H. Bergmann, on the subject of "Price Position" which informed all the licensee-members to whom it was sent that it was the unanimous opinion of the stockholder-licensee representatives comprising the board of directors that the resale prices should not be increased, and that a letter to the trade announcing the maintenance of the then present retail prices was being prepared (GX 782; Tr. 1780; Doc. 3–876).

204. Sealy, Inc. issued Bulletin No. 78 in September 1956, over the signature of E. H. Bergmann, which stated that M. A. Kaplan had been requested to compose a letter which could be sent by all licensee-members to active and prospective retail dealers regarding Sealy's decision to maintain then current resale prices. Attached to the bulletin was a copy of the letter composed by M. A. Kaplan, which Mr. Bergmann suggested should be dispatched from all licensee-members to all active and prospective dealers. The letter addressed to all Sealy dealers stated that retail prices could not be justifiably increased at the present time, and therefore Sealy was maintaining resale prices (GX 783; Tr. 1781–1784; Doc. 3–887, 3–888).

205. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletins No. 79 and ADV 109, entitled "Regulatory Decisions by Board of Directors, August 28, 1956," and which stated the decision by the stockholder-licensee representatives acting as the board of directors that a price comparison of $79.50 must never be used in promotional advertising (GX 784, 804; Tr. 1784–1785, 1800; Doc. 3–889, 3–1109).

206. From time to time Sealy, Inc. has issued specifications containing pre-ticketed resale prices and names for various Sealy products. These specifications have been approved by the stockholder-licensee representatives acting as the board of directors (GX 786–789, 791–793, 795–796; Tr. 1786–1792; Doc. 3–2900, 3–2953, 3–2965, 3–2967, 3–2969, 3–2970, 3–2979, 3–2986, 3–2991, 3–2992).

207. In September 1952, the stockholder-licensee representatives acting as the board of directors decided that the failure of any licensee to comply with every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, would be deemed to be harmfully and injuriously damaging to the Sealy name. This action brought the failure to comply with the minimum resale prices under the "manufacturer's contract" clause which allowed the stockholder-licensee representatives acting as the board of directors to terminate the contract with the stockholder-licensees for pursuing any course of action in the selling of Sealy products which would be detrimental or injurious to Sealy (Article IV, 13 of contract, GX 1098). This decision was disseminated to the licensee-members in Sealy Policy Bulletin No. 12, dated October 7, 1952, which also stressed the resale prices then established (GX 632, 743; Tr. 1723–1725, 1478–1479; Doc. 3–701, 3–1584).

208. Sealy, Inc. issued four specifications in February 1957 for Sealy products, each bearing a specified label containing a specific name and retail price (GX 798–801; Tr. 1795–1796; Doc. 3–2924 to 3–2927).

209. In April 1956, Sealy, Inc. issued Bulletin ADV. No. 42 to all licensee-members making available to them promotional ads, mats, and specifications for four promotions and specifying suggested retail

prices for six Sealy products (GX 803; Tr. 1799–1800; Doc. 3–1008 to 3–1010).

210. Sealy, Inc. in November 1956 issued its Bulletin ADV. No. 127 to all licensee-members enclosing proofs of advertising mats for Sealy's 76th anniversary sale last chance ads. Each of four mats contained the $59.50 price effective after March 16, the 76th anniversary sale price as $39.95, the savings of $19.55 if the Sealy Natural Rest mattress were purchased during the sale, and a pre-ticketed price of $59.50 after March 16 (GX 805; Tr. 1800–1802; Doc. 3–1132 to 3–1133A).

211. In December 1956, Sealy, Inc. issued its Bulletin ADV. No. 137 containing specifications and photostats of ads for the licensee promotional manuals. The specifications show retail prices for Sealy products. The ads show the name of the retail store and the price of $44.95 for the 837 coil mattress (GX 806; Tr. 1803–1805; Doc. 3–1147 to 3–1151).

212. Sealy, Inc. issued a manual for the licensee meeting to be held January 14, 1956 concerning the 1956 Posturepedic campaign, which contained the agreed upon and set retail price for the Posturepedic innerspring mattress (GX 807; Tr. 1806–1807; Doc. 3–3599 to 3–3649).

VII. POLICING OF AND ENFORCEMENT OF THE AGREED UPON AND SET RETAIL PRICES BY SEALY, INC.

213. In October 1951, E. H. Bergmann writing for Sealy, Inc., wrote to the Brooklyn licensee-member that one of his retailers had advertised a Sealy product below the permissible minimum price, and that he, Bergmann, must have written assurance from both the Brooklyn licensee-member and the retailer that such an ad would never occur again. Bergmann further stated that if the requested assurances were

not received he would bring the Brooklyn licensee-member's contract before the board of trustees for cancellation. Copies of this letter also were sent to other stockholder-licensees (GX 809; Tr. 801, 1814–1815; Doc. 3–3854, 3–3854A).

214. In November 1951, J. R. Lawrence for Sealy, Inc. wrote the Memphis licensee-member concerning an ad run by a dealer in Chattanooga which offered a Sealy product at a compared price, and instructed the Memphis licensee-member to bring the matter to the attention of the proper party so there would be no repetition of such an ad in the future (GX 810; Tr. 1816–1817; Doc. 3–3905).

215. In February 1952, E. H. Bergmann for Sealy, Inc. wrote directly to a retailer in Wichita, Kansas, that one of the retailer's ads which featured a $79.50 Sealy Posturepedic mattress for $39.75 had been brought to Sealy, Inc.'s attention and that such an ad was in violation of Sealy, Inc.'s rules. Bergmann further stated that all of Sealy, Inc.'s time and energy and every dollar it could spare was spent to establish the resale prices of Sealy merchandise so that dealers would not be subject to the vicissitudes of price cutting, and requested the retailer to refrain from any further price reductions on any regular pre-ticketed resale Sealy item (GX 811; Tr. 1818–1820; Doc. 3–3966).

216. E. H. Bergmann for Sealy, Inc. in February 1952 and February 1953 wrote the Los Angeles stockholder-licensee that the Los Angeles stockholder licensee's retailers had advertised Sealy headboard ensembles below the agreed upon and set minimum price (GX 812, 818; Tr. 1820–1822, 1830–1831; Doc. 3–3906, 3–3906A, 3–4049).

217. In October 1952, J. R. Lawrence for Sealy, Inc. wrote a retailer in Ohio concerning one of the

retailer's ads which violated Sealy, Inc.'s resale policy and requested and solicited the cooperation of the store in preventing a reoccurence. Lawrence further asked the retailer for written assurance that he would be guided by Sealy, Inc.'s policy on resale merchandise in the future and that, if the retailer wished to run a comparative price on Sealy merchandise, to work out an agreement with the Cleveland licensee-member for merchandise other than Sealy's regular resale line (GX 814; Tr. 1825–1826; Doc. 3–4227).

218. In December 1952, Sealy, Inc. by E. H. Bergmann wrote to the Reading licensee-member concerning an ad by a retailer making an allowance of $20.00 for an old mattress on a trade-in sale, and requested the Reading licensee-member to call it to the attention of the retailer and tell the retailer not to use any type of trade-in ads on Sealy merchandise (GX 815; Tr. 1826–1827, Doc. 3–4052).

219. In February 1953, the Cleveland stockholder-licensee wrote to Sealy, Inc. that certain retailers in Wheeling, West Virginia, and Youngstown, Ohio, who were retailers of the Pittsburgh stockholder-licensee, had advertised the Sealy Posturepedic mattress with a $5.00 trade-in allowance, and that some of the Cleveland stockholder-licensee's dealers were disturbed about it. E. H. Bergmann, president of Sealy, Inc., telephoned the Pittsburgh stockholder-licensee who in turn contacted the retailers involved and wrote Sealy, Inc. that the retailers denied doing such advertising (GX 816–817; Tr. 1828–1830; Doc. 3–3982, 3–3983).

220. In April 1953, the Brooklyn stockholder-licensee sent Sealy, Inc. an ad run by a retailer of the Memphis stockholder-licensee featuring a Sealy Smooth Sleep mattress at a compared price in violation of Sealy, Inc.'s regulations. Mr. Bergmann for Sealy, Inc. wrote the Memphis stockholder-licensee

and requested him to see if Sealy, Inc. and the Memphis stockholder-licensee could halt this type of handling of Sealy merchandise. The Memphis stockholder-licensee thereupon wrote the retailer and informed him that the ad was a violation of Sealy's retail advertising policy and ads of that type must not be run in the future, the particular mattress must be offered at its set resale price, and all selling must be done at the pre-ticketed price (GX 819–821; Tr. 1832–1836; Doc. 3–4231, 3–4232).

221. In June 1953, the Cleveland stockholder-licensee sent Sealy, Inc. an ad run by a retailer which showed a Sealy Posturepedic mattress at a cut price and requested Sealy, Inc. to write the retailer its usual firm letter even though the retailer was not a dealer of the Cleveland stockholder-licensee (GX 822; Tr. 1837–1838; Doc. 3–4235).

222. In July 1953, E. H. Bergmann for Sealy, Inc. wrote the Paterson licensee-member concerning an ad run by one of the Paterson licensee-member's retailers which violated Sealy, Inc.'s advertising policy and further stated that although the president of Sealy, Inc. had the right to reject any ads that are inconsistent with policy for credit on the advertising program, Bergmann would allow the ad to go in for credit, but asked the Paterson licensee-member to watch his accounts and see that they do not run ads inconsistent with Sealy, Inc. policy (GX 823; Tr. 1838–1839; Doc. 3–4233).

223. In August 1953, Sealy, Inc. wrote the Fort Worth licensee-member concerning an advertisement run by one of the Fort Worth licensee-member's retailers which violated practically all the rules of Sealy's comparative price policy by "breaking" the price on the Sealy Posturepedic mattress and advertising a Sealy product below the agreed upon and set

minimum price, and requested the Fort Worth licensee-member to write Sealy, Inc. concerning the matter (GX 824; Tr. 1839–1840; Doc. 3–4233).

224. E. H. Bergmann writing for Sealy, Inc. requested the Pittsburgh stockholder-licensee in December 1953, to protest to one of his retailers because an ad run by the retailer on a Sealy product violated the Sealy comparative policy by advertising the mattress as a regular $59.50 mattress for $39.95 and contained a "save twenty dollars statement" two weeks before the announcement of Sealy's national anniversary promotion (GX 825; Tr. 1841–1842; Doc. 3–4164).

225. In April 1954, E. H. Bergmann, president of Sealy, Inc., wrote the Kansas City licensee-member concerning an advertisement run by one of the Kansas City licensee-member's retailers which showed Sealy products below the agreed upon and set minimum retail price. Mr. Bergmann stressed the point that "Sealy *cannot* and *will not* tolerate such violations in the future," and threatened to put the Kansas City licensee-member on probation if any further infractions occurred from the time of such infractions to the end of the licensee agreement. Copies of the letter also were sent to licensee-members in Memphis, Louisville, Chicago, Des Moines, Denver, Houston, and Fort Worth. Subsequently, the Kansas City licensee-member wrote Mr. Bergmann that he had written every key account in his area urging them not to run any advertising on Sealy merchandise, other than those set up through Sealy's mat service, without obtaining a careful double check by the Kansas City sales representative, in order to reduce the possibility of running ads that may contain violations of Sealy, Inc.'s policy, and enclosed a copy of that

letter (GX 826, 829–830; Tr. 1842–1846, 1851–1856; Doc. 3–3729, 3–3730, 3–3733 to 3–3735).

226. The Cleveland stockholder-licensee in May 1954 notified one of his retailers that an ad run by the retailer constituted an extremely serious violation of Sealy advertising policy by advertising a Sealy product after the end of the permissible promotion period. That letter, a copy of which was sent to Sealy, Inc. and the Detroit stockholder-licensee, further stated:

> The second violation is that the anniversary and Golden Sleep *may not be sold* or advertised for less than $39.95, whereas your ad showed this merchandise at $37.88.
>
> *These policies are established not by our factory, but by Sealy nationally* and, therefore, there are national repercussions when such ads are run. [Emphasis supplied]

and requested the retailer to assure the Cleveland stockholder-licensee in writing that these Sealy products would not be advertised out of season, nor advertised or sold for less than the specified minimum (GX 833; Tr. 1859–1861; Doc. 3–4135, 3–4136).

227. In May 1954, Mr. Bergmann writing for Sealy, Inc. informed the Baltimore licensee-member that one of the Baltimore licensee-member's retailers had violated Sealy, Inc.'s advertising policies. The Baltimore licensee-member thereupon wrote the retailer that his advertisement was inconsistent with Sealy policy. A copy of this letter was then forwarded by the Baltimore licensee-member to Mr. Bergmann at Sealy, Inc. who in turn complimented the Baltimore licensee-member on this letter and stated *"This is just the type of policing that we should do in combination of the national and local offices* in cementing the retailers' minds to our advertising rules" (emphasis supplied) (GX 834–835; Tr. 1861–1865; Doc. 3–4160, 3–4161).

228. In July 1954, E. H. Bergmann, president of Sealy, Inc., wrote to the Louisville licensee-member and in August 1954 wrote the Chicago licensee-member about extracting a promise from a retailer in both licensee-members' territories not to advertise any Sealy mattress for less than $39.95 during the periods of Sealy, Inc.'s anniversary and Golden Sleep promotions and requested the licensee-members to arrange this agreement with the retailer (GX 676–677; Tr. 1612–1615; Doc. 3–3674, 3–3675).

229. In July 1954, J. R. Lawrence writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had advertised a Sealy product in a manner that violated Sealy, Inc.'s schedule on price comparisons and, further, that the Cleveland stockholder-licensee should take it up with the retailer and see that Sealy, Inc.'s policy on the retail advertising of Sealy merchandise was followed in the future (GX 836; Tr. 1865–1866; Doc. 3–4230).

230. In July 1954, J. R. Lawrence, executive vice president of Sealy, Inc., wrote the Baltimore licensee-member that one of the Baltimore licensee-member's retailers in Washington, D.C., had advertised a Sealy product below the agreed upon and set minimum retail price (GX 837; Tr. 1866–1867; Doc. 3–3877).

231. In September 1954, E. H. Bergmann, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had violated Sealy, Inc.'s policies by advertising Sealy products below the agreed upon and set minimum retail price, and requested the Cleveland stockholder-licensee to dispatch a letter to the retailer immediately, which letter would remind the retailer of Sealy, Inc.'s minimum retail price regulations and at the same time ask the retailer to

confirm compliance with these regulations in future ads. Bergmann further requested the Cleveland stockholder-licensee to furnish Sealy, Inc. with a copy of his letter to the retailer (GX 838; Tr. 1868–1869; Doc. 3–4137).

232. In September 1954, J. R. Lawrence, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that an organization calling itself Club Sales Merchandise Plan was circulating a catalog showing Sealy products below the agreed upon and set retail prices for these products and requested the Cleveland stockholder-licensee to help Sealy, Inc. trace down the source of these Sealy products (GX 839; Tr. 1869–1871; Doc. 3–4229).

233. E. H. Bergmann, president of Sealy, Inc., in September 1954 wrote the Chicago stockholder-licensee that one of the Chicago stockholder-licensee's retailers, Marshal Field & Company, had advertised Sealy products below the agreed upon and set minimum retail price and suggested that the Chicago stockholder-licensee inform the retailer to maintain the minimum retail price in the future (GX 840; Tr. 1872–1873; Doc. 3–4140).

234. Sealy, Inc., under the signature of E. H. Bergmann, wrote the St. Paul licensee-member in November 1954 about the St. Paul licensee-member permitting Sealy products with price tabs indicating retail prices to be sold and advertised at other than the retail tab price and instructed the St. Paul licensee-member to inform his sales manager and the retailers involved "that *there is a basic principal in Sealy of advertising and merchandising to the effect that if an article is pre-ticketed, it cannot be reduced in any manner, shape, or form*" (emphasis supplied) (GX 842; Tr. 1875–1876; Doc. 3–3779).

235. In January 1955, the Waterbury stockholder-licensee reported to Sealy, Inc. that a retailer of the Brooklyn stockholder-licensee had run an advertisement, which showed Sealy products below the agreed upon and set minimum retail price, enclosing a copy of the advertisement and expressed the certainty that Sealy, Inc. was doing all it could to correct the situation (GX 844; Tr. 1878–1880; Doc. 3–4145).

236. In February 1955, E. H. Bergmann for Sealy, Inc., had the Waterbury stockholder-licensee purchase a mattress from a discount house, which had listed a Sealy Posturepedic mattress below the agreed upon and set price, to ascertain the source of the discount house's supply of Sealy products. This source was thereby traced to the Brooklyn licensee-member (GX 845; Tr. 1880–1881; Doc. 3–4144).

237. E. H. Bergmann, writing for Sealy, Inc. in February 1955, informed the Richmond stockholder-licensee that a retailer of the Richmond stockholder-licensee had cut the price on the Sealy Anniversary mattress and further stated that "in the serious violations of our policies by retail dealers that this office [Sealy, Inc.] must take recognition of such violations" and "that this firm must be told that if there be a further violation of this nature that the national office [Sealy, Inc.] will take a position that the account must be denied any further Sealy merchanside." The Richmond stockholder-licensee thereupon wrote to the retailer about the violation and quoted the above statements from Mr. Bergmann's letter. After writing to the retailer, the Richmond stockholder-licensee replied to Bergmann, that he felt that Bergmann's solution to the situation was correct. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Richmond stockholder-licensee that he should not sell the tabloid circular on a forthcoming Posturepedic event to this

retailer but, if the Richmond stockholder-licensee felt he wanted to sell this to the retailer, then it was necessary for the Richmond stockholder-licensee to obtain a letter from the retailer stating definitely that the retailer would not reduce any price in the circular. Bergmann further stated if the retailer reduced any prices in the circular it would create chaos in that portion of Virginia and Washington, D.C., which is handled by the Baltimore licensee-member, and stressed that "Under no circumstances must *we* have a reoccurrence of this dealer violating *our* rules" (emphasis supplied) (GX 846–848; Tr. 1882–1886; Doc. 3–4157 to 3–4159).

238. E. H. Bergmann, president of Sealy, Inc., in February 1955, wrote the St. Paul licensee-member concerning an advertisement by one of the St. Paul licensee-member's retailers which showed Sealy products at reduced prices in violation of Sealy, Inc.'s advertising policies, and stated that Sealy, Inc. prohibited the reduction of any pre-ticketed Sealy product and that such ads could not be tolerated since they created chaos for the St. Paul licensee-member's other retailers and the retailers of contiguous Sealy plants. Bergmann further stated that, if the dealer persisted in running ads that were inconsistent to Sealy's establish policy of advertising and merchandising, Sealy, Inc. would not hesitate to tell the St. Paul licensee-member to which accounts he could or could not sell Sealy merchandise and instructed the St. Paul licensee-member to advise his retailer of the seriousness of these violations of Sealy, Inc.'s retail advertising policy (GX 849; Tr. 1889–1891; Doc. 3–3777, 3–3778).

239. In March 1955, C. B. McGillivray, sales manager of the Chicago stockholder-licensee, wrote one of the Chicago stockholder-licensee's retailers, with a

copy to Mr. Bergmann of Sealy, Inc. concerning an ad which the retailer had run which showed a Sealy mattress below the agreed upon and set minimum retail price and thereby violated Sealy, Inc.'s retail advertising regulations. The retailer's general manager agreed to run a retraction of the advertisement and gave the Chicago stockholder-licensee permission to use a copy of the retraction to reverify the Sealy, Inc. policy with other Chicago dealers who advertised and featured Sealy mattresses (GX 674; Tr. 1610–1611; Doc. 3–3673).

240. E. H. Bergmann of Sealy, Inc. in March 1955 wrote to the Cleveland stockholder-licensee that he had received a copy of an ad run by a retailer of the Cleveland stockholder-licensee which violated Sealy, Inc.'s retail advertising rules, and requested the Cleveland stockholder-licensee to take steps to correct it and write a letter to the retailer admonishing him not to advertise a Sealy mattress in a manner which would violate Sealy, Inc.'s retail advertising regulations and to send a copy of this letter to Sealy, Inc. (GX 851; Tr. 1893–1894; Doc. 3–4228).

241. E. H. Bergmann for Sealy, Inc. in March 1955, wrote the Chicago stockholder-licensee about an advertisement by one of the Chicago stockholder-licensee's retailers which showed a Sealy product below the agreed upon and set retail price as covered by a Sealy policy bulletin and requested the Chicago stockholder-licensee to verify the correctness of the advertisement and the correctness of the price restriction. The Chicago stockholder-licensee replied that he thought that Sealy should not object to the advertisement. Thereafter, Sealy, Inc. informed the Chicago stockholder-licensee that the ad was definitely a violation of the Sealy policy (GX 680–682; Tr. 1620–1625; Doc. 3–3667 to 3–3669).

242. In April 1955, E. H. Bergmann for Sealy, Inc., wrote the Allston licensee-member concerning an advertisement run by a retailer of Allston licensee-member which Bergmann had received and which violated Sealy, Inc.'s retail advertising policy, and informed the Allston licensee-member that Allston had violated the rules by permitting such an ad to be run and that "there must not be any repeats of this type of handling" (GX 852; Tr. 1894-1895; Doc. 3-4231).

243. In April 1955, the Louisville licensee-member wrote Sealy, Inc. that he had been approached by a firm which wanted to purchase Sealy products from the Louisville licensee-member. This firm had previously shown Sealy products below the agreed upon and set retail prices and was located at the same address at which a discount house was operated. The Louisville licensee-member further informed Sealy, Inc. that he had refused to sell this firm and had been informed by that firm that it could buy Sealy products from a Chicago outlet and requested Sealy, Inc. to check with the Chicago outlet and find out why it had sold to the retail firm in Louisville. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Chicago outlet stating that (a) the Louisville firm previously had shown Sealy products below the agreed upon and set retail prices; (b) the Louisville firm upon being refused Sealy products by the Louisville licensee-member had told the Louisville licensee-member he could get Sealy products from the Chicago outlet; (c) Sealy, Inc. could not and would not sell any type of firm which did not maintain Sealy, Inc.'s retail prices; and (d) Sealy, Inc. definitely did not want the Louisville firm to have any Sealy merchandise (GX 854-855; Tr. 1897-1900; Doc. 3-4146, 3-4147).

244. In May 1955, the Chester licensee-member, at

the request of one of his retailers, wrote Sealy, Inc. requesting permission to allow the retailer to promote a Sealy product in conjunction with a trade-in allowance during a week-long promotion by merchants in Atlantic City where the retailer was located. E. H. Bergmann for Sealy, Inc. denied this request, stating that Sealy, Inc. could not grant an exception to the rule in Sealy policy bulletins which restricted trade-in sales (GX 683–684; Tr. 1626–1628; Doc. 3–3501, 3–3502).

245. In June 1955, the Chicago stockholder-licensee wrote to one of his dealers concerning an ad run by the dealer which violated Sealy's retail advertising policy in showing Sealy products below the set minimum retail selling price and requested the dealer to inform its advertising department of the violations so there would be no repetition of such policy violations in the Chicago area. A copy of this letter was sent to E. H. Bergmann at Sealy, Inc. (GX 857; Tr. 1902–1903; Doc. 3–4130, 3–4131).

246. E. H. Bergmann for Sealy, Inc. in June 1955 wrote the Rochester licensee-member concerning an advertisement run by one of his retailers which Bergmann had received and which had violated every rule in the rule book of Sealy, Inc. Bergmann further informed the Rochester licensee-member that if he ever again permitted such a flagrant violation of Sealy, Inc.'s rules and regulations as had been permitted in that ad, his contract with Sealy, Inc. would be cancelled or he would be put on probation (GX 858; Tr. 1903–1905; Doc. 3–4165, 3–4166).

247. In July 1955, a retailer of the Chester licensee-member sent the Chester licensee-member an ad which another Sealy retailer in the area had run which featured Sealy products in combination with other items at a price below the agreed upon and set retail price

for Sealy products and informed the Chester licensee-member that Chester could not continue to carry Sealy products if he allowed that kind of advertising. The Chester licensee-member thereupon sent the ad to Sealy, Inc. and asked Sealy, Inc. whether the ad came within its "code" so the Chester licensee-member would know how to proceed. E. H. Bergmann for Sealy, Inc. replied that the dealer running the ad should be told emphatically that Sealy, Inc. did not approve of any Sealy resale item being combined with other items at a cut price and that such an indication of non-approval should be all that was necessary to keep the Chester licensee-member's retailers in line (GX 859–861; Tr. 1906–1911; Doc. 3–4151 to 3–4153).

248. In July 1955, the Schenectady and Brooklyn licensee-members exchanged correspondence about a retailer in New York City which advertised Sealy products below the agreed upon and set retail prices for Sealy products. Thereafter, the Schenectady licensee-member purchased a Sealy product from the retailer and found that it had been shipped by another retail customer of the Brooklyn licensee-member. In October 1955, the Schenectady licensee-member informed the Brooklyn licensee-member of his actions and the resultant findings and further that the offensive retailer's operation was very vicious in advertising and selling Sealy products at cut prices and since that retailer had a large mailing list in the Schenectady licensee-member's territory, he was causing a lot of trouble for the Schenectady licensee-member and his customers. The Brooklyn licensee-member replied that he had contacted his retail customer who had shipped the Sealy products to the offending retailer and he had admitted so supplying the offensive retailer and had guaranteed to no longer supply the offending retailer with any Sealy merchandise what-

soever. The Brooklyn licensee-member further stated that he had advised his retailer that he would continually police the offending retailer and if he found that he was selling Sealy products to the offending retailer the Brooklyn licensee-member would discontinue supplying him with Sealy products, and that the Brooklyn licensee-member would do everything in his power to stop the supply of Sealy merchandise to the offending retailer. The Brooklyn licensee-member forwarded a copy of this letter to Sealy, Inc. and the Waterbury and Paterson licensee-members. Subsequently, Sealy, Inc. by E. H. Bergmann on October 14, 1955 wrote the Brooklyn licensee-member with copies to the Schenectady and Waterbury licensee-members stating that since Sealy, Inc. had not received an answer from the Brooklyn licensee-member to its letter about the offending retailer, Sealy, Inc. assumed that the Brooklyn licensee-member had taken care of the situation in a manner satisfactory to the Brooklyn licensee-member's eastern associates (GX 865–867; Tr. 1917–1921; Doc. 3–4148, 3–4149).

249. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Richmond licensee-member concerning a retailer of the Richmond licensee-member who continually ran advertisements which were contrary to Sealy, Inc.'s retail advertising, merchandising, and price structure policies by featuring Sealy products below the agreed upon and set retail prices. Bergmann stated that Sealy, Inc. was not going to tolerate a customer taking carte blanche liberty with Sealy, Inc.'s policies and instructed the Richmond licensee-member to tell the retailer once and for all what Sealy, Inc.'s rules were and that the retailer must abide by them. Subsequently, the Richmond licensee-member telephoned the retailer and read to him portions of Bergmann's letter to the Richmond licensee-

member. The same day the Richmond licensee-member wrote the retailer requesting him to eliminate the objectionable features in his advertising as outlined by the Richmond licensee-member to the retailer and as outlined by Sealy, Inc. to the Richmond licensee-member, and informing him of the main objections to his advertisements and that it was mandatory that he adhere to Sealy, Inc.'s rules. The Richmond licensee-member further informed the retailer that Sealy, Inc. would insist that the Richmond licensee-member cease selling Sealy merchandise to him unless he eliminated the objectionable features from his advertising. The Richmond licensee-member then wrote Mr. Bergmann at Sealy, Inc. informing him that he had impressed upon the retailer that if the retailer continued his policies as outlined by Sealy, Inc., Sealy, Inc. would not allow any more Sealy merchandise to be sold to him (GX868–870; Tr. 1921–1923, 1926–1929; Doc. 3–4210 to 3–4214).

250. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Cleveland stockholder-licensee about an advertisement run by one of his retailers which was inconsistent with Sealy, Inc.'s advertising policies and suggested that the Cleveland stockholder-licensee speak to the retailer and get his assurance that he would refrain from such advertising in the future (GX 871; Tr. 1929–1930; Doc. 3–4182).

251. In March 1956, through E. H. Bergmann, Sealy, Inc. wrote to the Richmond licensee-member after his advertisements were submitted to Sealy, Inc. for credit on the advertising rebate program, that advertisements run by one of the Richmond licensee-member's retailers did not coincide with the Sealy, Inc. rules and regulations on retail advertising by featuring trade-in allowances on Sealy products, and instructed the Richmond licensee-member to advise

the retailer that he could not use the trade-in feature in ads pertaining to Sealy merchandise (GX 872; Tr. 1931–1932; Doc. 3–4209).

252. In April 1956, the Cleveland stockholder-licensee informed one of his retailers that an ad run by the retailer violated Sealy's retail advertising rules, that the Cleveland stockholder-licensee would not pay one cent towards the cooperative advertising agreement if any ad was run which violated the Sealy rules, and that such erroneous advertising would nullify any advertising agreement which they may have had previously established. The Kansas City stockholder-licensee, having received complaints from several of its largest customers about this advertisement by the Cleveland stockholder-licensee's retailer, wrote Mr. Bergmann at Sealy, Inc. that because the Kansas City stockholder-licensee rigorously fights to police its retailers' ads so that they conform to Sealy, Inc.'s established retail advertising policies, the Kansas City stockholder-licensee had received numerous complaints from its customers about this ad by one of the Cleveland stockholder-licensee's retailers that obviously Sealy policy was not the same all over the United States, and further requested a statement from Sealy, Inc. which the Kansas City stockholder-licensee could pass on to its dealers (GX 874–875; Tr. 1934–1937; Doc. 3–4181, 3–4200, 3–4201).

253. In May 1956, a retailer of the Lexington licensee-member complained to the Lexington licensee-member about a retail outlet offering Sealy products below the set retail prices. The Lexington licensee-member's sales representative inquired at the retail outlet about the availability of mattresses and was told that they offered only Sealy mattresses and the price of the Posturepedic foam rubber mattress was below the established retail price f.o.b. Washington,

D.C. The Lexington licensee-member thereupon wrote Mr. Bergmann at Sealy, Inc. that it was quite obvious that the retail outlet was having this merchandise transferred to them from Washington, D.C., and requested Sealy, Inc. to take whatever action was necessary. Sealy, Inc. thereupon sent the Baltimore licensee-member a photocopy of the Lexington licensee member's letter, and requested the Baltimore licensee-member to inform the Lexington licensee-member of the steps the Baltimore licensee-member had taken to eliminate the situation. Sealy, Inc. also informed the Lexington licensee-member that the District of Columbia was a haven for price cutters, had no fair trade laws, and that the Baltimore licensee-member had been doing a masterful job in controlling the price cutters (GX 877–878; Tr. 1939–1942; Doc. 3–4202, 3–4203).

254. In June 1956, Sealy, Inc. wrote the Cleveland stockholder-licensee concerning an advertisement by one of his retailers that violated Sealy Policy Bulletin No. 7, governing restrictions on promotional advertising, and requested the Cleveland stockholder-licensee to bear down on the retailer for advertising Sealy products in violation of the Sealy retail advertising policies (GX 879; Tr. 1943–1944; Doc. 3–4176, 3–4177).

255. In June 1956, one of the Memphis licensee-member's retailers complained to the Memphis licensee-member about the U.S. Merchandise Mart, Inc. in Fort Walton Beach, Florida, selling Sealy products at cost plus ten percent out of Washington, D.C., and informed the Memphis licensee-member that the U.S. Merchandise Mart was an Army discount house. The retailer further informed Memphis that he had tried to be fair with the sealy products and had not changed the retail price at which Memphis had told him to sell. Memphis thereupon forwarded a copy of the

retailer's letter to Mr. Bergmann at Sealy, Inc. and asked Bergmann if he had heard from the Baltimore licensee-member concerning a previous similar situation as the Memphis licensee-member would like to bring the matter to a definite conclusion (GX 880; Tr. 1944–1947). In July 1956, Mr. Rudick, the Baltimore stockholder-licensee, ceased supplying the U.S. Merchandise Mart with Sealy products until it gave Baltimore written assurance that it would refrain from shipping Sealy merchandise out of the greater metropolitan Washington, D.C. area (GX 1168–1172; Tr. 3485–3492).

256. In July 1956, the Chester licensee-member sent Mr. Bergmann at Sealy, Inc. a clipping which advertised a Sealy product in violation of Sealy, Inc.'s retail advertising policy. The ad had been run by a retailer of the Cleveland licensee-member. The Chester licensee-member further informed Sealy, Inc. that "Ernie" (the Cleveland licensee-member) should at least police his own area. E. H. Bergmann for Sealy, Inc. replied that this problem had been under review twice with the Cleveland stockholder-licensee and an issue would be made of the matter if there were any recurrences. Bergmann further pointed out that Sealy, Inc. had a clipping service and was watching for further violations, and Ernie (the Cleveland licensee-member) had promised to see that such violations were discontinued. Subsequently, in October 1956, the Chester licensee-member again sent Bergmann at Sealy, Inc. and ad run by a retailer of the Cleveland licensee-member which also violated Sealy, Inc.'s retail advertising policies. Bergmann thereupon wrote to the Cleveland stockholder-licensee about this further violation of Sealy, Inc.'s rules and stated that "* * * in this particular type of an organization *where the rules are set by those who wish to be gov-*

erned by said rules you have to be either fish or fowl and, * * * certainly the chairman of the advertising and merchandising committee * * * should be the one to lead in the strict adherence to these rules" (emphasis supplied). Bergmann further expressed the hope that he would not have to continue writing to Cleveland on these matters of policy infractions (GX 881–882, 891–892; Tr. 1947–1950, 1961–1964; Doc. 3–4171 to 3–4175).

257. In August 1955, E. H. Bergmann at Sealy, Inc., after ads were submitted by the Denver stockholder-licensee for credit on the advertising rebate program, discovered that an ad by one of the Denver stockholder-licensee's retailers showed Sealy products below the agreed upon and set retail price. Bergmann wrote the Denver stockholder-licensee concerning the violations and instructed him the ~~cut~~ in price could not be tolerated and further to direct a letter to the retailer calling his attention to the violation of Sealy, Inc.'s retail advertising policy and to obtain the retailer's immediate written assurance that the retailer would not repeat such price cutting on Sealy's nationally advertised resale items. Pursuant to these instructions, the Denver licensee-member wrote the retailer and informed him that the ad showing a price below the agreed upon and set retail price was a direct violation of Sealy's advertising policy, and solicited the retailer's immediate assurance that he would cooperate on future ads to avoid a recurrence. The Denver licensee-member also informed the retailer that all Sealy resale nationally advertised products could not "be advertised at discount, tie-in with a giveaway, trade-in allowance, or a group price," and that the ad had been called to the Denver licensee-member's attention by the Chicago office of Sealy, Inc. Denver forwarded a copy of this letter to Mr. Berg-

mann at Sealy, Inc. as per Bergmann's request. Thereafter Bergmann for Sealy, Inc. thanked the Denver licensee-member for his complete cooperation, referring to Denver's letter advising his retailer "of the complaint of the National Office," and stated that this letter was the proper technique to follow in impressing Sealy dealers that they must comply with Sealy advertising and merchandising policies (GX 883–885; Tr. 1951–1954; Doc. 3–4220 to 3–4222).

258. In August 1956, E. H. Bergmann for Sealy, Inc. sent the Rochester licensee-member a photocopy of a vigilante service report showing that the Vigilante Service had purchased a Sealy Posturepedic mattress from a discount house in Rochester, New York, at a price below the established retail price for that mattress and included the discount house's invoice which showed the identity of the discount house, the purchases made, the price and the shipping instructions. Bergmann informed the Rochester licensee-member that "As you know we have a vigilante service which each year buys one mattress at retail for the purpose of learning how prices are maintained * * *" and instructed Rochester to inform Sealy, Inc. of the steps Rochester had taken to correct the erroneous selling of Sealy merchandise to a discount house. Rochester replied that he had notified the discount house that Rochester would discontinue selling Sealy products to the discount house in the future and had retained the services of a shopping service to canvass Rochester's accounts and ascertain if any of them were discount houses. Rochester further promised that in the future he would not sell Sealy products to any account which was in the discount house class (GX 886–888; Tr. 1954–1958; Doc. 3–4223 to 3–4225).

259. In September 1956, Sealy, Inc. received from its clipping service a tear sheet of a full page advertisement by a retailer of the Rochester licensee-member which showed Sealy products below the agreed upon and set retail price. Mr. Bergmann of Sealy, Inc. thereupon wrote the Rochester licensee-member about the ad and informed Rochester that the ad was completely out of order because of the price stated therein and the name used thereon. Rochester replied that he would not offer this account any promotions in the future and would warn the account about the ad informing him in very definite terms that Rochester would not permit anything like this in the future (GX 889–890; Tr. 1958–1961; Doc. 3–4215 to 3–4217).

260. In October 1956, the Detroit licensee-member sent Mr. Bergmann at Sealy, Inc. an ad run by a retailer in New York which violated Sealy, Inc.'s retail advertising policies. Bergmann replied that he would write the Brooklyn licensee-member admonishing him for allowing an ad to be run which violated Sealy, Inc.'s retail advertising policies. Bergmann then wrote to Brooklyn as he had promised, about the offensive ad, pointing out the violations contained therein and instructed Brooklyn to tell the retailer that Sealy, Inc.'s rules "were not to be toyed with" and to advise Bergmann accordingly. Brooklyn, as instructed, contacted the retailer about the ad and the retailer promised not to violate Sealy, Inc.'s retail advertising regulations in any future ads. Brooklyn so informed Bergmann of the retailer's promise (GX 893–895; Tr. 1966–1970; Doc. 3–4183 to 3–4185).

261. In November 1956, a retailer of the Chicago stockholder-licensee complained to Sealy, Inc. about an ad which showed a Sealy product at a price below that established for that product, and pointed out that he could buy other mattresses for less than he paid

for Sealy products but that his store was willing to resell Sealy on a shorter margin because of Sealy's efforts to nationally advertise and presell Posturepedic products, but that for making this shorter margin concession, he expected inexorable price protection. The retailer further asked Sealy, Inc. what action it intended to take. The Chicago licensee-member replied to the retailer that Sealy's policy was to do everything within its persuasive and legal power to maintain their agreed upon and set advertised price on Sealy products and that a series of steps had been taken to make the company involved "comply with [Sealy's] policy and advertising requirements." Chicago then sent a copy of this letter to Sealy, Inc. (GX 896–897; Tr. 1971–1974; Doc. 3–4218, 3–4219).

262. In November 1956, E. H. Bergmann for Sealy, Inc. wrote the Baltimore licensee-member, complaining about a full page ad run by a Baltimore retailer which violated Sealy retail advertising policies, and condemned Baltimore as a member of the board of directors for permitting such an ad to be run (GX 898; Tr. 1974–1976; Doc. 3–4167, 3–4168).

263. E. H. Bergmann for Sealy, Inc. in November 1956 wrote the Fort Worth stockholder-licensee about a circular, one of the Fort Worth stockholder-licensee's retailers in *Texas* had distributed showing Sealy products below the agreed upon and set retail price. Fort Worth replied that, immediately upon receipt of Bergmann's letter, he had called the retailer who had withdrawn the offensive prices and agreed not to repeat such a circular. Fort Worth further pointed out to Mr. Bergmann that not only did the State of Texas not have fair trade laws, but they had antifair trade laws and therefore Fort Worth could not afford to write a retailer and be too positive in protesting cut prices; however, most of the Fort Worth's

dealers maintained the prices and cooperated with Fort Worth even though he did not have any weapons in Texas with which to fight (GX 899; Tr. 1977–1978; Doc. 3–4196).

264. In December 1956, the Chester licensee-member telephoned the Reading licensee-member about an ad run by a customer of Reading which showed a Sealy product at a price below the agreed upon and set minimum retail price for Sealy products. The next day Reading wrote E. H. Bergmann at Sealy, Inc., with a copy to the Chester licensee-member, and stated there was no question about the ad being a violation of Sealy, Inc.'s retail advertising and merchandising policy and that the retailer had run the ad against Reading's policy and without his knowledge. Reading further stated that he had an appointment with the retailer and the situation would be corrected. Subsequently, Chester wrote Reading, with a copy to Mr. Bergmann at Sealy, Inc., further informing Reading of the violations committed by advertising a Sealy product below the agreed upon and set minimum retail price. Chester also pointed out that *"we must always present to the public the thought that Sealy is a National Brand, not a brand manufactured by a number of different manufacturers but an entity,* even as the Simmons Co. is one," (emphasis supplied) and requested Reading to send Chester a copy of Reading's letter to the retailer indicating "that they may not under any conditions advertise Sealy in Phoenixville, otherwise the privilege of allowing you [Reading] to ship * * * [into Chester's territory] will be withdrawn immediately insofar as the Sealy name is concerned," and admonishing them for violating Sealy, Inc.'s authorized retail advertising policies (GX 901; Tr. 1980–1983; Doc. 3–3835, 3–3835A).

265. It was Sealy, Inc.'s admitted policy to urge

the stockholder-licensees to in turn urge their dealers to maintain the retail prices ageed upon and set by the stockholder-licensee representatives. As Mr. E. H. Bergmann, president of Sealy, Inc. from 1948 to 1960, put it, "We were always concerned with prices" (Tr. 3268–3269, 3271).

266. The purpose of the Sealy policy was to advertise Sealy products and "do everything we [Sealy, Inc.] possibly could to persuade the people to maintain those prices" (Tr. 3295).

267. In 1958, a retailer, Mr. G. N. Burkhart, Jr., in Brookston, Indiana, was informed by an official of the Chicago stockholder-licensee of Sealy, Inc. that Chicago was refusing to sell him any further Sealy products because Mr. Burkhart had not maintained the fixed retail prices for Sealy products (GX 1161; Tr. 3381–3395).

268. In the late 1956 or early 1957, a retailer, Mrs. Norman Bennett of the U.S. Merchandise Mart, Inc. in Washington, D.C., was informed by an official of the Baltimore licensee-member that "Sealy would no longer be able to sell us [the retailer] merchandise" (Tr. 3496), since the retailer was not selling the Sealy products at the fixed retail price. Subsequently, when Mrs. Bennett forwarded orders for Sealy merchandise to Baltimore, they were not accepted (Tr. 3498).

269. From 1962 until the present day, a consumer in the Washington, D.C., area, after diligent search, could not purchase a Sealy product below the retail price fixed by the stockholder-licensee representatives of Sealy, Inc. (Tr. 3462–3477).

270. Sealy, Inc., through its various officers, regularly policed and enforced the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. This

policing and enforcement was carried out through (1) subscribing to clipping services, (2) the advertising rebate progarm of Sealy, Inc., whereby the stockholder-licensees would send copies of their ads and their retailers' ads to Sealy, Inc. for credit on this program, and (3) the reporting by the stockholder-licensees and their retailers to Sealy, Inc. when they noticed infractions of Sealy, Inc.,'s retail policies and regulations. When violations of Sealy, Inc.'s retail regulations and policies were found, Sealy, Inc. by its officers would so inform the stockholder-licensees and instruct them to so inform their retailers or Sealy, Inc. by its officers would write directly to the retailers involved and inform them of the violations. The stockholder-licensees also regularly policed and enforced the retail prices set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. in the above described manner.

VIII. USE OF FAIR TRADE TO ENFORCE THE RETAIL PRICES AGREED UPON AND SET BY THE STOCKHOLDER-LICENSEE REPRESENTATIVES OF SEALY, INC.

271. In May 1951, J. R. Lawrence for Sealy, Inc. wrote the Des Moines stockholder-licensee informing him that under the federal Miller Tydings law, Sealy, Inc. could not establish resale prices for the entire group as they are not manufacturers, but they could direct their licensee-members to establish a uniform resale price (GX 902; Tr. 1984–1985; Doc. 3–4415).

272. In June 1951, the Detroit licensee-member telephonically solicited from J. R. Lawrence at Sealy, Inc., ideas for a suggested letter that the Detroit licensee-member could send to its retailers. J. R. Lawrence thereupon sent the Detroit licensee-member a suggested letter and stated it was essential to give the

retailers a list of the "fair traded" articles and the prices set thereon as agreed upon and set by the stockholder-licensee representatives which list J. R. Lawrence supplied (GX 903; Tr. 1986–1989; Doc. 3–4416, 3–4416A).

273. The Baltimore stockholder-licensee issued a bulletin to all of its Sealy dealers on the subject of "Discount Houses" informing them that: (a) Sealy would not tolerate price cutting on "their re-sale numbers"; (b) Sealy products would not be sold to discount houses; (c) discount houses had been shopped and the Baltimore stockholder-licensee had discovered that price cutters of Sealy merchandise were being supplied by so-called legitimate dealers; (d) the so-called legitimate dealers who were supplying these price cutters were breaking the law; (e) letters had been sent by Sealy attorneys to the parties involved threatening court action unless they ceased selling Sealy products to price cutters; (f) answers had been received from those who had been supplying the discount houses with Sealy products pledging to stop the practice in the future; (g) the Baltimore stockholder-licensee would take action, applicable to all fair trade areas, against any and all violators; and (h) the bulletin was to be a warning to all dealers found cutting the price on Sealy products or supplying anyone who cut the price on Sealy products (GX 904; Tr. 1989–1991; Doc. 3–4425).

274. In October 1953, the law firm of Haas, Holland and Blackshear, Atlanta, Georgia, by J. F. Haas, who was also the general counsel for Sealy, Inc., wrote a retailer in Baltimore, Maryland threatening to refer to local counsel for prosecution the matter of the retailer's aiding another retailer who was selling Sealy products below the "fair trade" fixed price on Sealy products, if the retailer did not give immediate writ-

ten assurance that he would immediately desist from that practice. The Atlanta law firm sent a copy of the letter to (a) Mr. E. H. Bergmann, the president of Sealy, Inc., (b) Mr. J. R. Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee. At the same time, J. F. Haas wrote to another retailer in Baltimore demanding that the retailer cease sales of Sealy products at less than the resale price and threatening to refer the matter to local counsel for prosecution unless Mr. Haas received within one week written assurance from the retailer that he would comply with the demand as stated in the letter. A copy of this letter was also sent to (a) the president of Sealy, Inc., Mr. E. H. Bergmann, (b) Mr. J. R. Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee (GX 905–906; Tr. 1992–1994; Doc. 3-4426, 3-4427).

275. In May 1954, Mr. E. H. Bergmann for Sealy, Inc. wrote directly to a retailer of the Pittsburgh stockholder-licensee, concerning an ad run by that retailer which featured Sealy products below the "fair trade" retail price agreed upon and set by the stockholder-licensee representatives. Mr. Bergmann advised the retailer that if he advertised for sale or sold any Sealy products below the agreed upon and set retail "fair trade" price, Sealy, Inc. was prepared to take such action as would be necessary to protect Sealy, Inc.'s products and rights, and instructed the retailer to acknowledge the notice and immediately advise Sealy, Inc. that he would abide by the minimum resale prices fixed for Sealy products. He further informed the retailer that a copy of Bergmann's letter was being sent to Sealy, Inc.'s general counsel with instructions to take immediate steps against the retailer if he did not agree to comply with the terms of that letter. In June 1954, Bergman again wrote

the retailer and informed him that although the retailer had received Bergmann's May 1954 letter, Bergmann had not received any reply from the retailer indicating his willingness to comply with the request to maintain the minimum resale "fair trade" prices fixed on Sealy products, and therefore, Sealy, Inc. had referred the matter to their general counsel for finalizing with instructions to immediately appoint local counsel to institute legal proceedings against the retailer. Mr. J. F. Haas, general counsel for Sealy, Inc., thereupon wrote the retailer informing him that Sealy, Inc. had referred the case to Mr. Haas as general counsel for Sealy, Inc. and stated that he understood that, at a conference between the retailer and Mr. Bergmann, an agreement had been reached that the retailer would immediately write Mr. Bergmann assuring him that the retailer would immediately cease selling Sealy products below the fixed retail "fair trade" price, and that such a letter had not been received. Haas further stated that unless such a letter was immediately sent to Mr. Bergmann with a copy to Mr. Haas, he would refer the matter to local counsel with instructions to file immediate suit against the retailer. In July 1954, Mr. J. F. Haas wrote an attorney in Youngstown, Ohio, that he, Haas, had referred the matter to local counsel in Ohio, and that the only remedy was for the retailer to provide Mr. Bergmann with the letter which he had promised in Chicago. In August 1954, Bergmann for Sealy, Inc. wrote the Pittsburgh stockholder-licensee that the controversy with the retailer had been successfully concluded, and a letter had been received from the retailer which stated that in the future the retailer would not sell Sealy products below the retail "fair trade" prices agreed upon and set by the stockholder-licensees. Bergmann further stated that "it has taken

considerable pressure on the part of the national office, General Counsel, and finally resorting to the appointment of local counsel * * * to institute proceedings against this firm [the retailer] for violations of the Ohio Fair Trade law" (GX 907, 909–912; Tr. 1994–1996, 2000–2007; Doc. 3–4322, 3–4411 to 3–4413, 3–4435, 3–4436).

276. In June 1954, the Cleveland stockholder-licensee wrote its retailers that all Sealy resale preticketed mattresses had been fair traded in the State of Ohio and all of Cleveland's Sealy retailers were bound by the fair trade law. He further informed the retailers that he had engaged a shopping service to investigate and report to him those dealers who were not abiding by the fair trade law, and such dealers would receive a warning; if the violations continued thereafter, he would take steps as provided in the fair trade law to put an end to those practices (GX 908; Tr. 1999–2000; Doc. 3–4338).

277. In August 1954, a retailer of the Kansas City licensee-member in St. Joseph, Missouri, wrote to E. H. Bergmann at Sealy, Inc. complaining that another Sealy dealer, located about sixty miles from St. Joseph, was selling Sealy products below the fixed retail "fair trade" prices for those products and requested Sealy, Inc. to urge "the Kansas City [licensee-member] officials to take immediate steps to correct this intolerable situation." The retailer further informed Bergmann that he had taken up the matter with the officials of the Kansas City licensee-member and had been assured that the offending dealer would receive no more Sealy products. Mr. J. R. Lawrence for Sealy, Inc. replied, with a copy to the Kansas City licensee-member, that while Sealy, Inc. did not knowingly sell to discount operations, the task of keeping Sealy merchandise out of their hands was a tremen-

dous one, and any program to be successful against such operations required an effective fair trade program for which *Sealy, Inc. on a national basis* and the Kansas City licensee-member on a local basis were laboring, and they were doing all possible to frustrate the operations of the discounters. In September 1954, the Kansas City licensee-member wrote Mr. Bergmann at Sealy, Inc. that he had visited the discount operator in Missouri and had informed him that it was absolutely essential that not *one* item of Sealy merchandise be *sold* below the fixed retail "fair trade" price which had been nationally advertised and, since the discounter had sold below that price, Kansas City would discontinue selling Sealy products to him. Subsequently, Bergmann replied to the Kansas City licensee-member that Kansas City had taken the correct steps to enforce the prices fixed by the Sealy, Inc. stockholder-licensee reprensentatives and that he should not hesitate to pass the information to other dealers and further "*Vigilance* must be a rule in the support of *our* Fair Trade prices and trade names" (emphasis supplied) (GX 913–916; Tr. 2008–2013, 2015–2019; Doc. 3–4319 to 3–4321, 3–4437 to 3–4439).

278. In February 1955, J. R. Lawrence for Sealy, Inc. wrote a retailer of the Cleveland stockholder-licensee concerning an ad run by the retailer showing Sealy, Inc.'s fair traded merchandise below the fixed "fair trade" price for that product, and stated that Sealy, Inc. was taking all the steps *it* could to protect the "fair trade" price of *its* products and solicited the retailer's cooperation and written assurance that he would not sell Sealy products below the retail "fair trade" prices fixed for those products (GX 917; Tr. 2020–2021; Doc. 3–4433).

279. In March 1955, E. H. Bergmann for Sealy, Inc. wrote the Cleveland licensee-member about the

decision by the stockholder-licensee representatives on the Executive Committee to set up a fair trade program which would be backed up by the national office in trade paper advertisements and requested the Cleveland licensee-member to send him full data on Cleveland's own fair trade program. He further stated that "The more complete this data can be * * * the better it will serve the national office purpose in formulating a national program to be presented to all of *our* people" (emphasis supplied) (GX 918; Tr. 2022–2023; Doc. 3–4418).

280. Beginning before or during March 1954, the Cleveland stockholder-licensee employed Pinkerton's National Detective Agency for the purpose of shopping various retailers of the Cleveland stockholder-licensee to determine if they were maintaining the retail "fair trade" prices on Sealy products as agreed upon and set by the stockholder-licensee representatives of Sealy, Inc. (GX 919–930; Tr. 2047; Doc. 3–4339 to 3–4402).

281. Sealy, Inc. with the stockholder-licensees of Sealy, Inc. regularly used the fair trade laws to enforce the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. through letters written by Sealy, Inc., through its various officers, to the retailers and through letters written by the stockholder-licensees to their retailers (1) insisting that the retailers discontinue violating the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc., (2) insisting that written assurance of compliance with such prices be forthcoming from the retailer, (3) informing the retailer that if such written assurance were not forth-

coming, Sealy, Inc. or the stockholder-licensee would (a) discontinue supplying the retailer with Sealy products, (b) inform other retailers to cease supplying the retailer with Sealy products, and (c) take legal action against the retailer under state fair trade laws.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the defendant and the subject matter of this action.

2. Defendant is engaged in interestate commerce.

3. Plaintiff has not proved by a preponderance of evidence that defendant, Sealy, Incorporated, has engaged in a combination and conspiracy with its manufacturing licensees to allocate territory among competitors in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

4. The assignment of exclusive territories by defendant, Sealy, to its manufacturing licensees does not violate the antitrust laws.

5. The defendant and its co-conspirators are and have been engaged in a continuing agreement, understanding, combination, and conspiracy in restraint of interstate commerce in mattresses and foundations in violation of Section 1 of the Sherman Act [15 U.S.C. §1] by agreeing to set minimum retail prices on Sealy products and to induce retailers to adhere to such retail prices.

(S) R. B. AUSTIN,
Judge, U.S. District Court.

Date: October 6, 1964.

APPENDIX B

In the United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, PLAINTIFF

v.

SEALY, INC., DEFENDANT

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint on two separate claims of violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, described in paragraphs 16(a) and 16(b) of said complaint. The defendant, Sealy, Incorporated, appeared and filed its answer. At the close of the government's evidence in support of the claims, the defendant moved to dismiss said complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion was denied, but the court indicated that there would be no finding that the allegations of paragraph 16(a), and proof submitted thereon, proved a violation of the antitrust laws. Defendant then presented its evidence relating to the price-fixing charge in paragraph 16(b) of the complaint and the government presented its rebuttal. At the close of all the evidence, the defendant renewed its motion to dismiss the claim of paragraph 16(a) of the complaint.

The court has considered the pleadings, evidence, briefs and arguments, and being fully informed, entered findings of fact and conclusions of law on October 6, 1964.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

This court has jurisdiction of the subject matter hereof and the parties hereto.

II.

Based upon the court's findings of fact 15 through 119 and its conclusions of law 3 and 4, the defendant's renewed motion to dismiss the claim in paragraph 16(a) of the complaint is granted and judgment is hereby entered dismissing the claim for relief contained in paragraph 16(a) of said complaint.

III.

Based upon the court's findings of fact 120 through 281 and its conclusion of law 5, the defendant and its co-conspirators, who are its stockholder licensees, have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act by agreeing to set minimum retail prices in Sealy products and to induce retailers to adhere to such retail prices.

IV.

As used in this Final Judgment:

(A) "Mattress" means an item of bedding composed of an outer covering, or tick, enclosing innersprings or a filler of latex, synthetic foam, felt or other materials, or both, designed to be used as a pad for a bed and usually rests upon bedsprings or other foundation or support;

(B) "Foundation" means an item of bedding, apart from the bedstead, designed to support the mat-

tress and often to provide additional cushioning, commonly but not exclusively composed of an upholstered frame enclosing springs;

(C) "Combination" means a mattress and foundation manufactured as a set to match each other and to be sold together;

(D) "Sleeper" means a sofa bed, studio couch, mattress, foundation, combination or Hollywood bed ensemble;

(E) "Sealy products" means bedding manufactured by Sealy licensees under Sealy's patents and secret methods, processes or specifications and sold under the Sealy brand-name and Sealy registered trademark;

(F) "Retail store" means a person engaged in the business of selling mattresses, foundation, combinations or sleepers to consumers;

(G) "Sealy licensee" means a person who is licensed by defendant to manufacture and sell Sealy products to dealers.

(H) "Dealer" means any person, other than defendant or a Sealy licensee, purchasing bedding for resale to the ultimate consumer.

V.

The provisions of this Final Judgment shall apply to the defendant, its successors, subsidiaries, assigns, officers, directors, agents and its employees, and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

(A) The defendant is enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy.

(B) The defendant is enjoined from entering into, adhering to or maintaining any contract, agreement, arrangement, understanding, plan or program to:

(1) fix, establish or maintain the price or other terms or conditions for the sale at retail of any mattresses, foundations, combinations or sleepers;

(2) induce any dealer to fix, establish, or maintain any minimum retail price for any mattresses, foundations, combinations or sleepers;

Provided, however, that nothing herein contained shall be construed to prohibit the defendant from disseminating and using suggested retail prices for the purpose of national advertising of Sealy products.

VII.

(A) For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the

Antitrust Division, the defendant shall submit such reports in writing to the plaintiff with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the modification, termination, construction or carrying out of this Final Judgment and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained therein.

X.

The plaintiff shall recover the costs of this action.

Enter:

(S) R. B. AUSTIN,
United States District Judge

Chicago, Illinois, December 30, 1964.

U.S. GOVERNMENT PRINTING OFFICE : 1965

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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~238~~ 9

UNITED STATES OF AMERICA,
Appellant

v.

SEALY, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 238

UNITED STATES OF AMERICA,
Appellant

v.

SEALY, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c), of the Revised Rules of this Court, respondent, Sealy, Inc., moves that the judgment of the district court be affirmed.

STATEMENT OF THE CASE

This is a direct appeal from a final judgment of the district court in a civil antitrust case brought by the government. The complaint charged that Sealy, Inc., ("Sealy") and its licensees conspired to divide marketing territories for "Sealy products,"[1] and to fix uniform sug-

[1] "Sealy products" are defined in para. IV(E) of the Final Judgment entered December 30, 1964 to mean "bedding manufactured by Sealy licensees under Sealy's patents and secret methods, processes or specifications and sold under the Sealy brand-name and Sealy registered trademark" (App. B. Jurisdictional Statement, p. 114a). (Page references hereinafter to the district court's Findings of Fact, Conclusions of Law and Judgment are to Appendices A and B of the Jurisdictional Statement ("J.S.").)

gested retail prices and induce retailers to adhere to such suggested retail prices for Sealy products, in violation of Section 1 of the Sherman Act (Fdg. 3, pp. 1a-2a).

As the district court found, "[t]he definitions of 'Sealy products' in both the complaint and answer exclude private label bedding, and there is no allegation that any licensee was restrained in any way in his manufacture or sale of products bearing his own label" (Fdg. 4, p. 2a). Accordingly, this case does not involve allegations of conspiracy vis-a-vis the "general market" for bedding, nor even alleged conspiracy affecting all bedding manufactured by Sealy licensees; rather, the issue is confined to alleged conspiracy with respect to these licensees' sales of bedding under Sealy's name or trademarks.

At the close of the government's evidence, the district court ruled that there was a failure of proof of the alleged conspiracy to divide markets and eliminate competition; Sealy accordingly put in no evidence on this issue and, at the close of the case, the court granted its renewed motion to dismiss this portion of the complaint under F.R.C.P. 41(b) (Fdgs. 8-10, 119; pp. 4a-5a, 51a; Final Judgment, para. II, p. 113a). It is from this judgment that the government appeals.[2]

Relying upon the theory of *Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951), and other *Cartel* cases (discussed hereinafter, pp. 17-20, *infra*), the government's fundamental contention below was that "Sealy, Inc. is no more than a facade," or a "front," which was "created and used [by the licensees] to camouflage their

---

[2] The district court upheld the retail price maintenance charge, issuing, according to the government, "an appropriate injunction" (J.S. 6). No appeal has been taken by either side from the pricing aspect of the judgment.

own collusive activities under a trademark umbrella."[3] The district court found no such conspiratorial scheme, but rather that the territorial restrictions of the Sealy licenses[4] were adopted for legitimate business reasons (Fdgs. 84, 119; pp. 33a, 51a); that they are "an essential inducement to prospective licensees—to get them to undertake the obligations of a Sealy license" (Fdg. 86, p. 36a); and that Sealy's "activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage" (Fdg. 119, p. 52a). Since the government relied entirely upon the *per se* unlawfulness of the alleged collusive scheme and made no claim of actual unreasonable restraint of trade, the court dismissed on the basis of failure of proof.

GROUNDS FOR AFFIRMANCE

The judgment below should be affirmed, and the government's contention that a *per se* rule governs the challenged licensing arrangement should be rejected, for the following reasons:

1. The district court found a failure of proof of the government's basic contention that Sealy is nothing but a "front" for a market-sharing conspiracy, to which a *per se* rule would be applicable. The court's findings of fact are unchallenged (*cf.* J.S. 7) and the judgment accordingly reflects no novel principle of law but rather an application

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[3] Plaintiff's Reply and Answering Brief, p. 35, April 17, 1961; Plaintiff's Brief in Opposition to Defendant's Briefs, etc., pp. 12, 14-15, October 12, 1961. See also Government's Post-Trial Reply Brief, p. 8, July 2, 1964: Sealy is "nothing more than a 'corporate veil' under the egis of which various independent bedding manufacturers . . . allocate territories."

[4] Sealy's answer admitted that "Sealy licensees are licensed to manufacture and sell Sealy products in specified geographical areas" (Fdg. 4, p. 2a).

of the time-honored doctrine of ancillary restraints enunciated in *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899).

2. The territorial covenants here challenged are "vertical restrictions" affecting only intra-brand competition. As this Court decided in *White Motor Co.* v. *United States*, 372 U.S. 253 (1963), such restrictions have not been shown to fall in the category of restraints which are illegal *per se*. Although Sealy licensees, over the years, have collectively acquired controlling stock in Sealy, the government's evidence furnishes no basis for disregarding Sealy's separate corporate entity; it establishes no invidious design, no actual or potential threat to competition, and no reason whatsoever for invocation of a *per se* rule in this case.

3. Even if Sealy originally had been formed by the Sealy licensees as a merger or as a joint venture—for legitimate business purposes—its legality would be judged upon the basis of its effect upon competition, and not by a *per se* rule. *United States* v. *First Nat'l Bank & Trust Co.*, 376 U.S. 665, 671-72 (1964); *United States* v. *Penn-Olin Co.*, 378 U.S. 158, 170 (1964).

4. The rule for which appellant contends would render unlawful a host of "franchise" arrangements and would contravene the public interest in vigorous competition and the national policy to foster small business.

5. Summary affirmance of the judgment below is particularly appropriate in the instant case because (a) the territorial feature of the Sealy licenses has previously been reviewed by the Federal Trade Commission upon a complaint similar to that in this case, and not found unlawful (*Matter of Sealy, Inc.*, 45 F.T.C. 730 (1948)); and (b) the Justice Department's theory that all territorial restrictions are illegal *per se* was fully argued and rejected in the very recent *White Motor Co.* case, *supra*.

FACTUAL STATEMENT

1. The Defendant

Sealy is a business corporation whose principal activities are the licensing of approximately thirty relatively small bedding manufacturers to manufacture and sell Sealy products in different parts of the United States, and the furnishing of certain services to such licensees, in exchange for royalties.[5] In 1959, domestic sales of bedding by all Sealy licensees were $58.6 million, and Sealy's royalty income was $1.4 million.[6]

The bulk of Sealy's common stock is owned by licensees or persons having direct or indirect interests in licensee concerns; however, the amounts of stock held by these persons differ substantially. For example, the Memphis licensee for many years held shares sufficient in number that he could, with one or two other large stockholders, exercise voting control of Sealy; more recently, the Detroit, Kansas City and Chicago licensees have acquired major holdings, with the result that they, with one or more smaller holders, have had voting control (Fdgs. 68, 72, 75, pp. 28a-30a).[7]

Sealy's affairs are controlled by a Board of Directors elected at its annual meeting, where each share of Sealy

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[5] Sealy also has a spring manufacturing subsidiary, Posture Products, Inc., and has licensees in Canada and Puerto Rico (GX 991G, 998, 1011, 1107 (p. 8-2); R. 2818-19).

[6] Annual sales by individual licensees ranged from $533,000 to $6.5 million, with three-fourths of the licensees having sales between $1 million and $3 million, and only five having sales over $3 million (Fdgs. 11-14, pp. 5a-6a).

[7] Sealy's stock was placed on a regular dividend basis in 1946 (Fdg. 67, p. 28a); it has increased in value from about $30 per share in 1936 to $352 per share in 1956 (Fdgs. 66, 76, pp. 27a-28a, 30a). Sealy's stock carries preemptive rights (GX 1008, 1011; R. 2328, 2345).

stock is entitled to one vote, and its day-to-day business is managed by an Executive Committee and the corporation's president (GX 981).[8] Under Sealy's by-laws, directors must be stockholders or nominees of stockholding licensees (see GX 981); however, stock ownership is neither required of nor limited to licensees.[9]

The evidence reveals the policy that the Board of Directors should "'consist of capable, energetic, ambitious and sound thinking men, *who have the interests of Sealy, Inc., at heart*, and that *it is to the interest of Sealy, Inc.*, to use the talents and abilities of as many of its [licensee] members as possible, therefore, the Board should be filled at all times with men of that caliber'" (Fdg. 45, p. 21a; emphasis in original).[10] Thus, Sealy stockholders "delegated most of the work to a few men who : . . spent much time working entirely in behalf of Sealy, Incorporated . . ." (GX 964; R. 2176).

Various types of evidence demonstrate that the affairs of Sealy have been managed and conducted in its own interests—not for the private interests of its individual stockholder-licensees. For example, the evidence shows that, over the years (1) Sealy made continuing efforts to attract new licensees in order to expand sales into unde-

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[8] In modern times the Board normally has consisted of fourteen members; the Executive Committee has been composed of the president ex officio and five directors (GX 981, 991D).

[9] Appellant is in error (J.S. 3) in interpreting long superseded license contracts (GX 1012-1018; *cf.* GX 1076-1106; R. 2360) as requiring licensees to own stock, and in assuming that Sealy's by-laws limit membership on its Board to representatives of licensees. Earl Bergmann, full-time Sealy president, and a director from 1950-1960, for example, was a Sealy employee and stockholder—not a licensee or licensee representative (see GX 991F-H; R. 2815-19).

[10] Wherever italics appear in quotations in this brief, emphasis has been supplied unless otherwise indicated.

veloped areas (Fdgs. 26, 31, 38, 84, 86, 89, 95-109; pp. 11a, 14a, 17a-18a, 33a, 36a, 37a-38a, 40a-48a); (2) it required that all territories yield a fair minimum royalty return ("par"), or be surrendered to Sealy (Fdgs. 45, 79-82, 91; pp. 21a, 31a-32a, 38a); and (3) it terminated licenses where licensees were doing a poor job for Sealy (see, *e.g.*, Fdgs. 85, 114, 117; pp. 35a, 49a, 50a-51a).

From the earliest days, where a matter affected the licensee interest of a member of the Board of Directors or Executive Committee of Sealy, that person was excused from the meeting and the matter was decided by the remaining, disinterested members (Fdgs. 30, 113; pp. 14a, 49a; *cf.* Fdgs. 104, 117; pp. 43a, 51a).

Sealy has a headquarters staff of professional, technical and clerical personnel. It checks on compliance by the licensees with Sealy specifications (Fdg. 41, pp. 18a-19a). Valuable functions are performed by Sealy (for royalties) in the fields of advertising, engineering and research, styling, production, specifications, merchandising, cost and accounting, purchasing, and the like (Fdgs. 36-60, 119; pp. 16a-26a, 51a-52a).

Advertising and merchandising have become increasingly important in the bedding industry over the years since Simmons, the industry leader, introduced and began national advertising of its "Beautyrest" mattress in about 1926 (R. 2825-28, 2832; DX 17-19).[11] Sealy's annual advertising budget approached $1 million in 1956-1958 (DX 26-27; R. 2898, 2906).[12] Special merchandising programs

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[11] Most major brand bedding manufacturers advertise their products nationally in media of mass circulation (R. 3017-19, 3077-81, 3093-96; DX 50-58B, R. 3113-14).

[12] It is impractical, if not impossible, for Sealy licensees to advertise individually in nationally distributed magazines (DX 26, R. 2898, 2911).

("promotions"), designed by Sealy and conducted twice a year, involve an over-all theme supported by national advertising, local advertising and dealer aids. Such promotions are an industry practice; they provide an important source of revenue, generating, for example, approximately half of the annual sales volume of Sealy licensees (R. 2843-45, 2855, 2861, 2892, 3030), and contributing substantially to Sealy's royalties.

2. Origin and Purpose of Sealy Licenses

Prior to 1920, Sealy products were manufactured by Sealy Mattress Company, a division of Sugar Land Industries, with factories at Sugar Land, Texas; Kansas City, and St. Louis, Missouri; and Oklahoma City, Oklahoma. In the early 1920's, Sugar Land licensed certain other concerns to manufacture and sell bedding under Sealy patents, trademarks and processes. In 1923, it began to sell its plants to local interests in the cities where they were located, executing license agreements permitting the purchasers to continue manufacturing and selling Sealy products in the areas previously served. By the end of 1923 some nineteen plants in different parts of the United States were licensed to manufacture and sell Sealy products in exchange for royalties (Fdgs. 16-18, pp. 6a-7a; Plaintiff's Pre-Trial Brief, p. 5, October 15, 1963).

Some time prior to 1925, Mr. E. E. Edwards, who had been manager of the Sealy mattress business for Sugar Land Industries, obtained an option from Sugar Land to purchase this business from it. He organized a new corporation (Sealy Corporation) for the purpose, with himself as president, and issued its notes, secured by a pledge of its stock, for the purchase price. He then entered into stock sale agreements with the Sealy licensees whereunder,

ultimately, three-fourths of the stock was to go to the Sealy licensees (whose licenses were renewed), and one-fourth to Edwards for his promoter's services. The contract which Edwards entered into with each licensee stated that the purpose was " 'so that the name could be advertised and used for the benefit of all those manufacturers who hold license contracts, for the manufacture and sale of Sealy mattresses' " (Fdg. 20, p. 8a). Edwards also "stood to make a substantial profit from his 25% of the stock if the new corporation were successful, and . . . had little or no personal liability if it were not" (Fdg. 21, pp. 8a-9a).

Minutes of meetings of Edwards and the licensees during the years 1925-1932 reflect discussion of numerous matters of proper joint interest to them as stockholders and licensees, and no discussion of division of markets. The district court found that this evidence "negatives the existence in the origin of Sealy Corporation of a central conspiratorial purpose to divide the United States among competing mattress manufacturers" (Fdgs. 19-26, pp. 7a-11a).

In Executive Committee minutes relating to the "depression-caused financial difficulties" of Sealy Corporation and its licensees in December 1932, references are found to " 'the primary purpose of the organization [being] to secure national advertising, and that mainly is what each factory secures from the Sealy Corporation' " and to "the desirability of signing enough licensees to operate Sealy factories in 47 cities[18] because . . . 'it was unanimously conceded that the mattress business is very nearly a local business, and it is practically impossible for a foreign factory to go into a local territory and secure any profitable business . . .' " (Fdg. 26, p. 11a).

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[18] By this time, there remained only eight Sealy licensees (Fdg. 32, p. 15a).

Sealy Corporation defaulted on the purchase money notes given to Sugar Land and, in August 1933, promoter Edwards arranged, with assistance from the surviving licensees, to buy in the assets and organize a new company, Sealy, Inc., to continue its business (Fdgs. 32-35, pp. 15a-16a).

In 1936, Edwards left Sealy, selling his stock to the company (Fdg. 66, pp. 27a-28a). There is no dispute that, since that time, the bulk of Sealy stock has been owned (in widely varying amounts) by Sealy licensees, as previously described.

Neither is there any dispute, as the district court found, "that the Sealy licenses contain provisions assigning to each licensee an exclusive territory, in which Sealy agrees not to license any other person to manufacture or sell 'Sealy products,' and outside of which the licensee agrees not to manufacture or sell 'Sealy products'; it is also undisputed that . . . *there are no restrictions upon the areas where licensees can manufacture or sell their own-brand products* as long as they are not passed off as Sealy products. . . . A territorial provision like this has been in the Sealy licenses from the beginning . . ." (Fdg. 27, p. 12a).

From the early 1930's "and up to the latest times covered by plaintiff's evidence," the district court found, "the record shows that Sealy continued to seek new licensees to fill in parts of the country not adequately served by existing licensees.[14] It is obvious that an essential inducement to

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[14] Although there was during the depression of the 1930's a plan whereby licensees might sub-license portions of their territories to others (see J.S. 5), the evidence shows that this plan was abandoned in 1936 and sub-manufacturers' contracts were eliminated (GX 931; R. 2052-55); thus " 'the franchising of territories is an exclusive right that is the property of Sealy, Incorporated,' and a licensee could not relicense territory to another plant" (Fdg. 87, p. 36a; see also Fdgs. 89, 92-93, 108, pp. 37a-39a, 46a-47a).

prospective licensees—to get them to undertake the obligations of a Sealy license—was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties" (Fdg. 86, p. 36a).

Taking as an example the evidence with respect to Sealy's efforts over the years to obtain licensee coverage of the Southeastern part of the United States, the district court found that "Sealy obtained territory from old licensees, found new licensees, shifted territory among licensees, discontinued its contracts with some licensees, and finally found a satisfactory licensee for the Carolinas at Lexington, N.C., but never did, insofar as the record shows, settle on a suitable licensee for Georgia and Florida. This series of events," the court found, *"negatives the contention that Sealy is a front for competitors who created it and use it to divide the United States among themselves to avoid competition"* (Fdg. 85, pp. 34a-35a).[15]

To the district court, the evidence as a whole demonstrated that "there has never been a central conspiratorial purpose on the part of Sealy and its licensees to divide the United States into territories in which competitors would not compete. Their main purpose has been the proper exploitation of the Sealy name and trademarks . . . [and the territorial restrictions were] secondary, or ancillary, to the main purpose . . ." (Fdg. 84, p. 33a).

3. The Bedding Industry

Inter-brand competition is intense in the bedding industry, both at the manufacturer and the retailer level. There

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[15] As a contracting party, Sealy could not disassociate itself from boundary disputes; it encouraged discussions and negotiations in order to achieve amicable settlements (Fdgs. 30, 109; pp. 13a-14a, 47a-48a), but the final decision rested with Sealy's president and Board of Directors (GX 753; R. 2375-76).

are at least 400 substantial bedding manufacturers in the United States (R. 2823-24).[16] A great many retail outlets —furniture and department stores and mail order houses, particularly—handle various brands of bedding. For example, the number of bedding outlets runs into the hundreds in Indianapolis and Memphis (R. 3177-80, 3201-04) and, although there are fewer outlets in Peoria, the bedding business is highly competitive (R. 3140-41). There is much price cutting and discounting by retailers from manufacturers' suggested retail prices, similar to the appliance and automobile businesses (R. 2949-50).

Appellant conceded that Sealy licensees have "many competitors" (R. 3060-62), and disclaimed any contentions regarding the vigor of inter-brand competition (R. 3057-59).[17]

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[16] Competition among the fifteen or twenty mattress manufacturers in the Chicago area was described by a Simmons district sales manager as "very tough, very competitive," and in Cleveland and Denver as "vigorous" and "strong" (R. 3047, 3062-63).

[17] At pre-trial and throughout the trial, appellant took the position that this was a *per se* case and industry data was irrelevant. See, *e.g.*, R. 2525-39, and particularly R. 2534, where appellant's counsel averred that there is "plenty of [interbrand] competition" by Simmons, Englander and "many small local mattress" companies.

ARGUMENT

I. The Judgment of the District Court Embodies No Novel Principles of Law but Rather Reflects a Finding of Failure of Proof of a Conventional Charge of Conspiracy

A. Appellant Having Failed to Prove That the Challenged Arrangement Was Either Designed to, or Had the Effect of, Unreasonably Restraining Trade, the Complaint Was Properly Dismissed

At the trial, appellant offered many hundreds of exhibits (most of them multi-paged records from Sealy's files going back to 1925) in an effort to prove that the primary purpose of its trademark licensing arrangements was the elimination of competition among competing bedding manufacturers. This evidence proved, instead, these salient facts: (1) Sealy's "main purpose" was to exploit its name and trademarks through royalty-producing license agreements with bedding manufacturers "within their natural trading areas" (Fdg. 84, pp. 33a-34a; *cf.* Fdg. 26, p. 11a), and that "an essential inducement to prospective licensees —to get them to undertake the obligations of a Sealy license —was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties" (Fdg. 86, p. 36a).[18] (2) The licensees' "primary purpose" was to finance national advertising in order to be better able to compete with the large national brand companies (see Fdgs. 20, 26, pp. 8a, 11a; *cf.* J.S. 9). (3) The licensing arrangement eliminated neither existing

[18] Even with this "inducement," Sealy had been unable over the years to "settle on a suitable licensee for Georgia and Florida" (Fdg. 85, p. 35a), and for long periods of time such presumably desirable territories as Philadelphia went unlicensed (see Fdgs. 93, 99, 104; pp. 39a, 41a, 43a).

nor potential competition among licensees since, to whatever extent they might be competitors in the sale of bedding under their own brands, that competition was not restricted by the Sealy licenses (see Fdgs. 3, 4, 5c, 27, pp. 1a, 2a, 3a, 12a).[19] Inter-brand competition—by small, local manufacturers with the industry giants—was greatly enhanced.[20]

Upon this record, the district court quite properly upheld the territorial provisions of the Sealy licenses (see Fdg. 84, p. 33a); they are "merely ancillary to the main purpose of a lawful contract," and valid both at common law and under the Sherman Act, in accordance with the rule of reason. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 281-82 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899). This rule of law has stood over the years as a foundation stone for territorial covenants in a wide variety of agreements in a great many industries.[21]

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[19] Nor was any licensee prevented from competing with his private brand against another licensee's Sealy brand.

[20] See R. 2894-95, 2898, 2911. See also testimony by licensees of Sealy and by other bedding manufacturer licensees in *Hearings on S. 1396 before a Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary*, 87th Cong., 1st Sess. (1961). *Cf.* Sandura Co. v. FTC, 339 F.2d 847, 858 (6th Cir. 1964): "The only clear picture that emerges . . . is that closed territories made for the vigor and health of Sandura, increasing the competitive good that flows from *inter*brand competition without any showing of detriment in *intra*brand competition." (emphasis in original)

[21] See Oregon Steam Navigation Co. v. Winsor, 87 U.S. 64, 66-67 (1873); Apollinaris Co. v. Scherer, 27 Fed. 18 (S.D.N.Y. 1886) (upholding territorial covenant in a trademark agreement); Fowle v. Park, 131 U.S. 88 (1889); Phillips v. Iola Portland Cement Co., 125 Fed. 593, 594-95 (8th Cir. 1903), *cert. denied*, 192 U.S. 606 (1904); Cincinnati Packet Co. v. Bay, 200 U.S. 179 (1906); Hanover Milling Co. v. Metcalf, 240 U.S. 403 (1916); Cole Motor Car Co. v. Hurst, 228 Fed. 280 (5th Cir. 1915); Coca Cola Bottling Co. v. Coca Cola Co., 269 Fed. 796, 814 (D.Del. 1920); Thoms v. Sutherland, 52 F.2d 592, 595 (3d Cir. 1931); United States v. E. I.

As recently restated in *United States* v. *Columbia Pictures Corp.*, 189 F.Supp. 153, 178 (S.D.N.Y. 1960): "The doctrine of ancillary restraints . . . permits, as reasonable, a restraint which (1) is reasonably necessary to the legitimate primary purpose of the arrangement, and of no broader scope than reasonably necessary; (2) does not unreasonably affect competition in the marketplace; and (3) is not imposed by a party or parties with monopoly power."

(1) *Sealy's territorial restrictions are necessary.* The territorial restrictions in Sealy's licenses are not a mere accommodation by Sealy to its licensees. Illustrative of the district court's finding that such a restriction is "an essential inducement to prospective licensees" is the following: the greater Philadelphia territory remained unlicensed for a long period of time (see note 18, *supra*); neither the New Jersey nor the Baltimore nor any other licensee found it practical to undertake additional license and royalty obligations and to make the local investment in time and money necessary to build up a business in Sealy products.

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duPont de Nemours & Co., 118 F.Supp. 41, 219 (D.Del. 1953), *aff'd*, 351 U.S. 377 (1956); Foundry Services, Inc. v. Beneflux Corp., 110 F.Supp. 857, 861 (S.D.N.Y.), *rev'd*, 206 F.2d 214 (2d Cir. 1953); Wilbert W. Haase Co. v. Sultz, 43 T.M. Rep. 841 (W.D.N.Y. 1953); Schwing Motor Co. v. Hudson Sales Corp., 138 F.Supp. 899 (D.Md.), *aff'd*, 239 F.2d 176 (4th Cir. 1956), *cert. denied*, 355 U.S. 823 (1957); Tri-Continental Financial Corp. v. Tropical Marine Enterprises, Inc., 265 F.2d 619, 625 (5th Cir. 1959); Reliable Volkswagen Sales & Service Co. v. World-Wide Automobile Corp., 182 F.Supp. 412, 427 (D.N.J. 1960); Beloit Culligan Soft Water Service, Inc. v. Culligan, Inc., 274 F.2d 29 (7th Cir. 1959); Denison Mattress Factory v. Spring-Air Co., 308 F.2d 403 (5th Cir. 1962); Engbrecht v. Dairy Queen Co., 203 F.Supp. 714 (D. Kan. 1962); Snap-On Tools Corp. v. FTC, 321 F.2d 825 (7th Cir. 1963); Sandura Co. v. FTC, 339 F.2d 847 (6th Cir. 1964).

In 1951, Sealy's president brought in a new licensee to cover the area—Fisher Products Company, of Chester, Pa., a firm that previously had not even been in the mattress manufacturing business (see R. 2894-95; *cf.* Fdg. 104, p. 43a).[22] Naturally, making a large investment and putting forth substantial effort, this concern required assurance that once it had built up a business in Sealy products, licensees in adjoining areas would not *then* begin to sell into the area under the Sealy name in order to "skim the cream." By the same token, a continuing territorial restriction is necessary in order to induce licensees to continue to expend time and money in building the acceptance of Sealy products in their respective territories; they cannot logically be expected to do so without assurance that the fruits of their labor will not be appropriated by others.[22a]

(2) *Sealy's territorial restrictions are "of no broader scope than reasonably necessary," and do not unreasonably affect "marketplace" competition.* To whatever extent a licensee concern is able to sell its private brand products on their own merits in its own or any other areas, such sales are completely unaffected by the territorial provisions of the licenses (Fdg. 27, p. 12a). Moreover, the government concedes that there is "plenty" of inter-brand competition

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[22] Speaking generally of recruitment of new licensees, E. H. Bergmann, former Sealy president, testified to a number of cases (including Fisher Products) "where we have brought in a licensee for a certain section of the country who probably was doing, maybe, $200 or $300 thousand volume, and after a matter of five years or ten years, he was up to a million or more" (R. 2894-95).

[22a] A similar requirement of territorial protection was found to be the distributors' condition for handling the line in Sandura Co. v. FTC, 339 F.2d 847, 853 (6th Cir. 1964). See also Note, *Restricted Channels of Distribution under the Sherman Act*, 75 HARV. L.REV. 795, 811-13 (1962).

in the bedding industry (R. 2534). Thus, the territorial restraint in question is of the type which "promotes competition," not one which "may suppress or even destroy competition"; it does not affect the "general market." *Chicago Board of Trade* v. *United States*, 246 U.S. 231, 238, 240 (1918); see also *White Motor Co.* v. *United States*, 372 U.S. at 261.

B. The Cartel Cases Relied Upon by Appellant Are Inapposite

Appellant does not challenge the district court's findings of legitimate "primary purpose," but contends that the court reached the wrong conclusions in applying the law. Thus, it argues that "the arrangements . . ., although formally vertical, *amount to* agreements between competitors to divide markets" (J.S. 7), that the "system challenged . . . is, *in effect*, a 'horizontal' division of territories illegal *per se*" under the authorities (J.S. 8), and, hence, that the district court's findings as to legitimate "primary purpose" are irrelevant (J.S. 9).

The cases relied upon by appellant (J.S. 7), holding that market division schemes are *per se* unlawful, are completely inapposite. In each of them was found a primary purpose to eliminate competition. For example, in *United States* v. *Timken Roller Bearing Co.*, 83 F.Supp. 284, 310, 312, 314 (N.D.Ohio 1949), *aff'd*, 341 U.S. 593 (1951), the district court found as a fact that the "trademark provisions of the challenged contracts were subsidiary and secondary to the *central purpose* of allocating trade territories." The challenged arrangements affected some 80% of all tapered roller bearings manufactured in the United States, Britain and France (83 F.Supp. at 288-89), and involved price fixing in joint territories, and collective activities to eliminate competition from outsiders, as well as exclusive sales

territories (83 F.Supp. at 318). This Court affirmed, noting that "the *dominant purpose* of the restrictive agreements . . . was to avoid all competition," and pointing out that "prior decisions plainly establish that agreements providing for an aggregation of trade restraints such as those existing in this case are illegal . . ." (341 U.S. at 597-98).[28]

The finding that the central purpose of the arrangement here was legitimate—not one of allocating trade territories—clearly distinguishes this case from *Timken*. A most important additional difference is that, in *Timken*, the territorial covenants prevented the co-conspirators from manufacturing, selling or dealing in bearings except under the "Timken" mark, which "provided a ready means of policing the division of territories . . . prevented British . . . and French Timken from building up good will in a different mark . . . [and] assured continuation of the territorial allocation, since those companies could termi-

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[28] Other cases relied upon by appellant are of similar character: United States v. Addyston Pipe & Steel Co., 85 Fed. 271 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899), involved an agreement among dominant manufacturers, the sole purpose and effect of which was to fix prices and divide territories; the only defense offered was that the prices fixed were reasonable. In United States v. National Lead Co., 63 F.Supp. 513, 523-24 (S.D.N.Y. 1945), *aff'd*, 332 U.S. 319 (1947), it was found that the primary purpose and effect of the arrangement under attack was division of markets for virtually 100% of the world's supply of titaniuin. United States v. Nationwide Trailer Rental System, Inc., 156 F.Supp. 800 (D.Kan. 1957), *aff'd*, 355 U.S. 10 (1957), also involved a price fixing and territory division scheme and has been cited for the proposition that "the rule of reason is inapplicable to agreements *made solely for the purpose of eliminating competition.*" (White Motor Co. *v.* United States, 372 U.S. at 281 (dissenting opinion); see also United States v. Penn-Olin Co., 378 U.S. 158, 178 (dissenting opinion), describing the *Nationwide Trailer Rental* case as involving an "agreement establishing exclusive territories for each member of an organization set up to regulate the one-way trailer rental industry. . . .")

nate only by accepting virtual destruction. . . ."[24] Sealy licensees have the right to, and in fact do, manufacture and sell under other brands, without restriction as to sales territory.[25]

Appellant might have cited numerous other *Cartel* cases in which elimination of competition was the primary purpose of the arrangement, and to which the doctrine of ancillary restraints, accordingly, had no application.[26] In

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[24] Brief for the United States, pp. 53-54, Timken Roller Bearing Co. v. United States, 341 U.S. 593 (1951). See NEALE, THE ANTITRUST LAWS OF THE U.S.A. 316, n. 1 (1960): "The trouble arises . . . when the agreement requires the foreign firm to refrain from selling an unpatented product in the United States under any trade-mark." In Denison Mattress Factory v. Spring-Air Co., 308 F.2d 403, 409 (5th Cir. 1962), the court similarly distinguished the *Timken* case, pointing out that "the primary purpose of the [Spring-Air] agreement was not to avoid the antitrust laws" and noting particularly that "Denison's private brand products were not affected in any material manner by the agreement."

[25] See p. 10, *supra*. Private brand sales by Sealy licensees within their licensed territories in 1959 aggregated $2,463,260 (GX 1107, p. 9-2) and, although the record does not show *quantities*, government counsel conceded that licensees also sell their private brand mattresses outside these territories (R. 2534).

[26] See, *e.g.*, United States v. Holophane Co., Inc., 119 F.Supp. 114, 119 (S.D.Ohio 1954), *aff'd*, 352 U.S. 903 (1956); United States v. General Electric Co., 80 F.Supp. 989, 1009 (S.D.N.Y. 1948) (*Carboloy* case); United States v. United States Alkali Export Ass'n, 86 F.Supp. 59, 71-74, 79, 80 (S.D.N.Y. 1949); United States v. General Electric Co., 82 F.Supp. 753, 845-48 (D.N.J. 1949) (*Lamps* case); United States v. Imperial Chemical Industries, 100 F.Supp. 504, 527-29, 557, 559 (S.D.N.Y. 1951); United States v. Bayer Co., Inc., 135 F.Supp. 65, 70-71 (S.D.N.Y. 1955): "dominant purpose was to divide the world market. . . . transfer of trademark rights were incidental to that major objective." For general discussions of the *Cartel* cases, see NEALE, *supra* note 24, at 302-20; BREWSTER, ANTITRUST AND AMERICAN BUSINESS ABROAD 79-80, 120-22 (1958); FUGATE, FOREIGN COMMERCE AND THE ANTITRUST LAWS 132-35 (1958).

each instance, however, careful consideration was given by the courts to the nature and purpose of the arrangement, and it was only after finding that market division was a primary objective, and not merely incidental to a legitimate main undertaking, that the ancillary restraints doctrine and the rule of reason were held not to apply. Where there is no such overriding illegal purpose, as the Attorney General's Committee Report recognized, "valid trade-mark rights may provide a lawful main purpose to which reasonable restrictions on competition may be properly ancillary and therefore legal."[27]

C. Appellant Misconstrues This Court's Holding in the White Motor Case

Appellant's reliance (J.S. 6-8) upon *White Motor Co.* v. *United States*, 372 U.S. 253 (1963), is misplaced for two reasons: first, it attempts to relate dicta in *White Motor* concerning "'horizontal' division of territories" to the *vertical* arrangement in the case at bar. Second, we submit, it completely misconstrues those dicta.

Although it is true that the Court "stated, without qualification, that '[i]f competitors agree to divide markets, they run afoul of the antitrust laws'" (J.S. 7), it is perfectly clear that the reference was to agreements whose primary purpose and effect was the elimination of competition, *i.e.*, as in the *Cartel* cases discussed above. This is not only a fair interpretation of the language used but the Court cited the *Timken* case immediately following the quoted statement (372 U.S. at 259).

Appellant is wrong in stating (J.S. 8): "*White Motor Co.* v. *United States*, 372 U.S. 253, 263, reaffirmed that '[h]orizontal territorial limitations • • • are naked restraints of

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[27] Att'y Gen. Nat'l Comm. Antitrust Rep. 87 (1955).

trade.'" This is a truncated quotation. The Court's statement actually was: "Horizontal territorial limitations . . . are naked restraints of trade *with no purpose except stifling of competition*" (372 U.S. at 263). Again, there can be no doubt that the Court was referring to the principle of the *Cartel* cases: territorial arrangements *whose primary purpose is to eliminate competition* are naked restraints of trade and unreasonable *per se*.[28] It is only by deleting from the Court's definition of "horizontal territorial limitations" the "purpose" qualification that appellant is able to argue that "any proffered legitimate purposes, such as collective advertising, are immaterial" (J.S. 10).[29]

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[28] See BREWSTER, *op. cit. supra* note 26, at 79: "Agreements among otherwise unaffiliated competitors which, by their terms, are designed solely to fix price, determine output, allocate customers, or coerce competitors are generally conceded to be 'naked' restraints of trade which are unlawful per se. . . ."

[29] Appellant's citation of Mr. Justice Brennan's concurring opinion in *White Motor* (J.S. 8) is similarly lacking in merit. Justice Brennan stated that "[i]f it were clear that the territorial restrictions . . . had been induced solely or even primarily by appellant's dealers and distributors, it would make no difference . . . that [they] . . . were formally imposed by the manufacturer rather than through inter-dealer agreement" (372 U.S. at 267, citing Interstate Circuit, Inc. v. United States, 306 U.S. 208, and United States v. Masonite Corp., 316 U.S. 265, 275-76). This statement, considered with the cases cited, simply reiterates the well-established principle that neither the form of an unlawful combination, nor the fact that there was an indirect meeting of minds, will save an unlawful combination. See Timken Roller Bearing Co. v. United States, 341 U. S. 593 (1951) (an agreement among competitors designed to suppress competition cannot be "justified by labeling the project a 'joint venture'" [*id.* at 598], and "[a] trademark cannot be legally used as a device for Sherman Act violation" [*id.* at 599]). See also Sandura Co. v. FTC, 339 F.2d 847, 857 (6th Cir. 1964) (a closed territory plan "conceived by the distributors and policed by Sandura . . . . would, of course, be invalid as a horizontal agreement not to compete" [citing *Interstate Circuit* and *Timken*]).

Placing complete reliance upon its misapprehension of *White Motor*, the government makes no effort to distinguish the many decisions which have held territorial restrictions consistent with antitrust policy (see note 21, *supra*), and it does not even assert that the restrictions here challenged have an adverse effect upon competition. Not even the standard governing "tying" arrangements, the use of which, it has been held, "can rarely be harmonized with the strictures of the antitrust laws . . ." (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 330 (1962)) is so rigid as the *per se* rule here urged. As the Court pointed out in *White Motor*, tying arrangements "may fall in [the *per se*] category, though not necessarily so," noting the "importance of the nature of the tying arrangement in its factual setting" (372 U.S. at 262-63).

If the Court's *White Motor* decision meant what appellant now contends, *i.e.*, that all territorial restraints having any "horizontal" aspect are, regardless of motive or effect, *per se* illegal, then that decision, without discussion or express statement of intention to do so, substantially demolished the deep-rooted ancillary restraints doctrine. No longer would the seller of a business, or a capital asset, or the owner of a trademark and secret process, be free to follow the long-established and customary practice of selling, leasing or licensing rights to another and agreeing not to compete with him.[30] And such territorial franchises as those granted to local dealers or manufacturers by a great many business concerns—in such varied industries as hearing aids, soft drinks and soft ice cream, swimming pool equipment, drive-in restaurants, rug cleaning, water

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[30] *Cf.* cases and authorities cited at note 21, *supra;* see also 6A Corbin, Contracts §§ 1389, 1409 (1962); 5 Williston, Contracts § 1642 (rev. ed. 1937); Restatement, Contracts §§ 515-16 (1932); Oppenheim, Federal Antitrust Laws 1-6 (2d ed. 1959).

softening and burial vaults[31]—would be outlawed under the rule for which appellant contends, carried to its logical conclusion under the *Interstate Circuit* and *Masonite* cases (that is, a "conspiracy" would be established by virtue of the fact that each dealer accepted a restricted franchise with the knowledge and understanding that each other dealer was accepting a similarly restricted franchise).

This was the rule for which appellant argued in the *White Motor* case. Thus, it contended:

> "In stating that an agreement for a 'division of markets' was unlawful per se, the Court, in Northern Pacific, drew no distinction between vertical and horizontal agreements. The Court has long held that vertical and horizontal price fixing agreements are equally unlawful per se. We submit that agreements between a manufacturer and his distributors providing for a division of markets among the distributors are as unlawful per se as a division among the distributors themselves. There is no reason for engrafting an exception upon the general rule outlawing this category of restraint of trade."[32]

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[31] See LEWIS & HANCOCK, THE FRANCHISE SYSTEM OF DISTRIBUTION 22-23 (prepared by U. Minn. for Small Business Administration, 1963); see also cases cited, note 21, *supra*, and Hearings, *supra* note 20, pp. 90-100, 102-103, 145-73.

[32] Brief for the United States, p. 12, White Motor Co. v. United States, 372 U.S. 253 (1963). The argument was made again (*id.* at 17-18 and 21) based upon the statement in Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 408, that a manufacturer "can fare no better with its plan of identical contracts than could the dealers themselves. . . ." Appellant also argued (*id.* at 9): ". . . even if there were a relevant theoretical distinction between market divisions voluntarily undertaken by manufacturers and those instigated by dealers, any such distinction would not be administerable in practice because of the interrelated motivations of the dealers and the manufacturer which go into any decision by a manufacturer to divide its purchasers' markets."

In deciding *White Motor*, this Court did not accept this argument, but stated (372 U.S. at 263): "We need to know more than we do about the actual impact of these arrangements on competition to decide whether they have such a 'pernicious effect on competition and lack . . . any redeeming virtue' . . . and therefore should be classified as *per se* violations of the Sherman Act."

In summary, therefore, although appellant purports to rely upon *White Motor*, this appeal in fact represents a transparent effort to reargue and overrule its basic holding—to draw "no distinction between [Sealy's] vertical agreements and horizontal [cartel] agreements" but to presume that they have a "pernicious effect on competition and lack . . . any redeeming virtue," and that evidence to the contrary is irrelevant. Appellant's attempt to use this appeal as a vehicle to obtain reargument of its doctrinaire theories on territorialization should be summarily rejected.

II. Application of a Per Se Rule in the Case at Bar Is Unwarranted

A. The Restraints Here Challenged Do Not Fall in the Per Se Illegal Category Established by the Decided Cases

Activities held *per se* unlawful under the Sherman Act are those as to which ". . . experience and analysis have established the utter lack of justification to excuse [their] . . . threat to competition." *White Motor Co.* v. *United States*, 372 U.S. 253, 265 (concurring opinion); see also majority opinion, *id.* at 262, and *Northern Pac. R. R.* v. *United States*, 356 U.S. 1, 5 (1958).[23] The precise holding

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[23] See also Loevinger, *The Rule of Reason in Antitrust Law*, 50 VA.L.REV. 23, 32-35 (1964); Van Cise, *The Future of Per Se in Antitrust Law*, 50 VA.L.REV. 1165, 1171-74 (1964).

of the *White Motor* case, we believe, is that, to date, the courts "know too little of the actual impact" and not "enough of the economic and business stuff out of which [vertical territorial restrictions] emerge" to hold them unlawful *per se* (372 U.S. at 261, 263, 264).[34]

The restrictions here challenged are vertical restrictions and, there being no proof that Sealy is a "mere instrumentality" of the licensees with no separate existence of its own[35]—or that it was formed for the purpose of circumventing the antitrust laws[36]—plaintiff has shown no reason whatsoever why the Court should depart from its holding in *White Motor*.

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[34] *Cf.* Appalachian Coals, Inc. v. United States, 288 U.S. 344, 360-61 (1933): "The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. . . . The familiar illustrations of partnerships, and enterprises fairly integrated in the interest of the promotion of commerce, at once occur. The question of the application of the statute is one of intent and effect; and is not to be determined by arbitrary assumptions." It is noteworthy that the Court went on to compare the arrangement in *Appalachian Coals* to a merger—to which no *per se* rule applied (*id.* at 377)—much as the Court did in *White Motor* (see 372 U.S. at 263-64).

[35] See 1 FLETCHER, CYC. CORPORATIONS § 25 (1963); Cannon Mfg. Co. v. Cudahy Co., 267 U.S. 333 (1925); Press Co. v. NLRB, 118 F.2d 937, 945-46 (D.C. Cir. 1940), *cert. denied*, 313 U.S. 595 (1941); Central Retailer-Owned Grocers, Inc. v. FTC, 319 F.2d 410 (7th Cir. 1963); Nuarc Co. v. FTC, 316 F.2d 576 (7th Cir. 1963); Steven v. Roscoe Turner Aeronautical Corp., 324 F.2d 157, 160-61 (7th Cir. 1963); Nichols & Co. v. Secretary of Agriculture, 131 F.2d 651 (1st Cir. 1942).

[36] See note 37, *infra*.

B. The Facts Do Not Warrant Extension of the Per Se Rule to the Territorial Restrictions Here Challenged

Appellant claims neither illicit purpose nor "pernicious" competitive effect; it contends only (J.S. 11) that the decision below "permits an arrangement whereby competitive manufacturers may divide territories (and thus avoid a *per se* restriction of the antitrust laws) by taking restrictive licenses from a trademark holder whom they collectively control"; this is pure assertion, unsupported by law, evidence, or common sense. Competitors are prohibited from entering into a combination having any such primary purpose by the rule of the *Cartel* cases[37] and the *Interstate Circuit* and *Masonite* cases, discussed above, and any such combination, regardless of purpose, would be unlawful under the ancillary restraints doctrine if it in fact resulted in an unreasonable restraint of trade.[38] The decision of the district court in the case at bar in no way impinges upon these principles.

The rule of reason, the Court pointed out in *United States* v. *American Tobacco Co.*, 221 U.S. 106, 181 (1911), extends the reach of the law to ". . . every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts [are] clothed . . . . [T]here [is] no possibility of frustrating that policy by resorting to any disguise or subterfuge of form . . . ." At the same time, it was noted (*id.* at 180), the rule of reason "prevent[s] that [Sherman] act from destroying all liberty of contract and all substantial right to trade, and thus causing the act

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[37] In particular, United States v. National Lead Co., 332 U.S. 319, 343 (1947), United States v. New Wrinkle, Inc., 342 U.S. 371, 374 (1952), and United States v. American Tobacco Co., 221 U.S. 106, 171-72 (1911), hold that a jointly owned corporation may not be used as a vehicle for effectuating unreasonable restraints of trade.

[38] See p. 15, *supra*.

to be at war with itself by annihilating the fundamental right of freedom to trade which, on the very face of the act, it was enacted to preserve. . . ."

Thus, rather than implementing the Sherman Act, the mechanical rule the government urges would infringe some of the very liberties and rights the act was designed to protect.

III. Even if Sealy Originally Had Been Formed by Its Licensees as a Joint Venture, or as a Complete Merger of Their Businesses, Its Legality Would Not Be Judged by a Per Se Rule

The government's basic position on this appeal is that the collective stock ownership and control of Sealy by its licensees renders the territorial provisions of its licenses *per se* unlawful (J.S. 2, 7, 8, 9). But, assuming the legitimate primary purposes found by the district court,[39] even if its small business licensees had organized Sealy initially as a jointly owned venture, or as a consolidation of their businesses, the legality thereof under Section 1 of the Sherman Act would not be tested by a *per se* rule. See *United States* v. *First National Bank & Trust Co. of Lexington*, 376 U.S. 665, 671-72 (1964). In fact, such a harsh rule would not even test its legality under the Clayton Act.

Section 7 of the Clayton Act,[40] it has been held, applies to the formation of a joint venture concern by two or more corporations, the same as to a merger. *United States* v. *Penn-Olin Co.*, 378 U.S. 158, 170 (1964). The test of legality

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[39] Appellant does not contest the court's "entirely legitimate business purposes" findings (Fdg. 119, p. 51a; see also p. 17, *supra*), presumably recognizing that this Court will not try issues of intent *de novo*. United States v. Yellow Cab Co., 338 U.S. 338 (1949).

[40] 38 Stat. 731, as amended, 15 U.S.C. § 18 (1958).

of a joint venture,[41] as set forth in *Penn-Olin*, is "the probability of a substantial lessening of competition"—not one of *per se* illegality—taking into account such criteria as

> "the number and power of the competitors in the relevant market; the background of their growth; the power of the joint venturers; the relationship of their lines of commerce; the competition existing between them and the power of each in dealing with the competitors of the other; the setting in which the joint venture was created; the reason and necessities for its existence. . ."

and so on (378 U.S. at 177).[42]

By the same token, if Sealy's licensees had gone so far as to merge their separate companies into a single concern (thus permanently eliminating competition among themselves—on both private and Sealy brands), and were charged with monopolizing trade in "Sealy products" in violation of Section 2 of the Sherman Act, a *per se* rule would not govern. Instead, the power of the resulting corporation in the relevant market and line of commerce—taking into account the "reasonably interchangeable" products of competitors—would be carefully weighed and measured. *United States* v. *E. I. duPont de Nemours & Co.*, 351 U.S. 377, 395 (1956) (*Cellophane* case).

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[41] Assuming the absence of "specific intent to use [the joint venture] as a vehicle to eliminate competition." United States v. Penn-Olin Co., 378 U.S. at 176. See also United States v. Timken Roller Bearing Co., 83 F.Supp. at 312: "If a joint venture . . . is formed for the purpose of a lawful business enterprise and restraints result from the right to protect established business interests no violation of law occurs."

[42] Joint ventures, as this Court observed in *Penn-Olin*, are of ancient vintage and "[t]heir economic significance has grown tremendously in the last score of years . . ." (378 U.S. at 169).

Clearly, the *contractual* arrangement in the case at bar, found by the district court to be legitimately motivated and which enables small and new businesses to compete effectively against large established ones, without merging and losing their independence, should be judged by no less flexible and realistic standard than the *structural* arrangements just described.

IV. The Rule for Which Appellant Contends Would Contravene the Public Interest in Vigorous Competition and the Fostering of Small Business

A *per se* rule here, compelling intra-brand competition among small licensee concerns while leaving large integrated manufacturers free to concentrate their competitive weapons on inter-brand competition, could lead only to a weakening of the independents, strengthening of the integrated concerns, and increased industry concentration. Proper antitrust enforcement demands no such result. As a recent head of the Antitrust Division stated:

> "[T]he basic approach of antitrust is toward the promotion of free competition in the market rather than toward the preservation of any one group. This does not mean that antitrust need cramp that cooperation between small businessmen which generates effective competition with larger rivals but which at the same time maintains maximum independence of individual business decision. Trade association activities, joint ventures, research and technology pools, etc.—when grounded on legitimate business purposes—have traditionally found approval under the 'rule of reason' approach of antitrust."[43]

The Court of Appeals for the Fifth Circuit recently fol-

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[43] Bicks, *The Enforcement Policies of the Department of Justice and the Small Businessman*, 16 A.B.A. Antitrust Section Rep. 54, 55-56 (1960).

lowed this rule of reason approach in the recent case of *Denison Mattress Factory* v. *Spring-Air Co.*, 308 F.2d 403 (1962). This case involved an antitrust challenge to territorial licensing arrangements (similar to those in the case at bar) of a company formed, and whose stock was jointly owned, by its licensees. Finding legitimate reasons for the arrangement and no improper purpose, the court refused to apply a *per se* rule, observing that "[a]n agreement which strengthens and promotes competition is not a violation of the law."[44]

Conceivably, one or more such licensee groups might provide the only effective competition for a dominant concern in a particular industry,[45] yet, under the *per se* rule for which the government here contends, its pro-competitive nature and practical business justification could not be

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[44] 308 F.2d at 413. This decision was quoted with approval by the House Small Business Committee in its 1963 report following an investigation of the threatened application by the Federal Trade Commission of a *per se* rule to cooperative advertising by groups of independent retailers. H. R. Rep. No. 699, 88th Cong., 1st Sess. 14 (1963); 5 CCH TRADE REG. REP. ¶ 50,200 at 55,234.

[45] In the Brief Amicus Curiae filed by Serta Associates, Inc., et al, in the *White Motor* case, it is stated that Serta's stock is owned by its 36 ma[illegible]ss manufacturing licensees; that each licensee holds an exclusive territory for Serta-identified products; that the "main competitor of the Serta licensees is the Simmons Company, a nation-wide firm with 13 factories, 61 warehouses . . ." and that the second largest nationally integrated competitor is the Englander Company (pp. 5-6). It further states that these licensees first considered merging their businesses because national advertising had become a "competitive necessity" and that the licensing arrangement was designed "as a means of enabling the . . . regional licensees to remain in business and compete with . . . Simmons" (p. 7). This brief also states that since the Serta licensing program was initiated in 1931, "five other similar trademark licensing groups have been formed in the mattress industry" (p. 8). A case similar to the one at bar is pending against Serta (J.S. 3, n. 1).

considered. Indeed, under this rule, it might be effectually destroyed by judicial decree, and a monopoly created—all in the interest of labels, pigeonholes, and an easy, mechanical method of administering the Sherman Act—without the record ever showing the basic economic facts. Any such result would make a mockery of the maxim that the Sherman Act

> "[a]s a charter of freedom, . . . has a generality and adaptability comparable to that found to be desirable in constitutional provisions. . . . The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness."[46]

Since the territorial restrictions of the Sealy licenses are necessary to its survival (see pp. 10-11, *supra*), an order enjoining their use would tend to destroy the vigor of the inter-brand competition which Sealy assists its licensees to furnish to Simmons, Englander and other large bedding manufacturers. This would be without compensating public advantage, for the very intra-brand competition which the government seeks would substantially destroy the licensees' incentive to build sales and good will under the Sealy name. Contrary to principles previously stated by this Court, such an order would favor competitors with the "longest purse" and seriously cripple "smaller independents"[47]—the Sealy licensees.[48] To paraphrase a statement

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[46] Appalachian Coals, Inc. v. United States, 288 U.S. 344, 359-60 (1933). See also White Motor Co. v. United States, 372 U.S. at 261: "*Standard Oil Co.* v. *United States*, 221 U.S. 1, 62, read into the Sherman Act the 'rule of reason' . . . [which] normally requires an ascertainment of the facts peculiar to the particular business."

[47] See United States v. Paramount Pictures, Inc., 334 U.S. 131, 164 (1948).

[48] See note 6, *supra*.

made by the Court in the *White Motor* case: the territorial restrictions in the Sealy licenses (together with the marketing services rendered by Sealy, which are financed by the royalties from its territorial licenses) provide "the only practicable means [these] small compan[ies] ha[ve] for breaking into or staying in business . . . and [they are] within the 'rule of reason'" (372 U.S. at 263). They are fully consistent with and tend to carry out not only the Sherman Act's main purpose to promote competition but the national policy favoring "'local control' over industry and the protection of small businesses" (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 316 (1962); see also *id.* at 346).[49]

V. The Special Circumstances of This Case Make Affirmance of the District Court's Judgment Particularly Appropriate

Although, in a case such as this, the Expediting Act provides that the losing party's "first and only appeal" shall be to this Court, plenary consideration is not necessary "if the question presented is plainly insubstantial or directly governed by a controlling decision of this court..." *Kennecott Copper Corp.* v. *United States*, 85 Sup. Ct. 1575 (June 1, 1965) (dissenting opinion), *affirming per curiam* 231 F.Supp. 95 (S.D.N.Y. 1964).[50] Under these principles,

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[49] Significantly, the Lanham Act provision that a trademark may not be "'used to violate the antitrust laws of the United States'" (as noted at J.S. 10) was enacted not to hinder small businesses in their efforts to compete with giants, but to help them. Senator O'Mahoney stated (92 CONG. REC. 7872-73): "There have been occasions . . . when trade-marks have been misused . . . used in connection with cartel agreements . . . used to restrain the trade and to the disadvantage of little business."

[50] *Cf.* United States v. National Malleable & Steel Castings Co., 358 U.S. 38 (1958), *affirming* 1957 TRADE REG. REP. ¶ 68,890 (N.D.Ohio 1957).

we submit, the fact that the territorial feature of the Sealy licensing arrangements has previously been reviewed by the Federal Trade Commission[51] as well as by the district court in the case at bar, together with the fact that the same anti-territorialization arguments made here by the Antitrust Division were very recently submitted and rejected by this Court in *White Motor* (see pp. 20-24, *supra*), makes further consideration of this particular case unnecessary. Under the circumstances, the Court should not feel compelled to review the lengthy record herein, and Sealy should be spared the further expense and travail of a full scale appeal.

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[51] Matter of Sealy, Inc., 45 F.T.C. 730 (1948).

CONCLUSION

For the reasons hereinabove set forth, "it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument" (Rule 16, para. 1(c)), and the judgment of the district court should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 9

UNITED STATES OF AMERICA, APPELLANT

v.

SEALY, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court rendered no opinion. Its findings of fact and conclusions of law (R. 63–152) are unreported.

JURISDICTION

This is a civil antitrust action brought by the United States under Section 4 of the Sherman Act, 15 U.S.C. 4. The final judgment of the district court (R. 153–156) was entered on December 30, 1964. On February 26, 1965, the United States filed a notice of appeal to this Court (R. 157), and on October 11, 1965, this Court noted probable jurisdiction of the appeal (R. 160; 382 U.S. 806). The jurisdiction of this Court to review the judgment below on direct appeal is conferred by Section 2 of the Expediting Act, Febru-

ary 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *White Motor Co.* v. *United States*, 372 U.S. 253; *United States* v. *Masonite Corp.*, 316 U.S. 265.

QUESTION PRESENTED

Sealy, Inc. is a corporation holding trademarks on bedding products. Sealy is owned and controlled by approximately 30 bedding manufacturers to whom it has licensed the right to manufacture and sell bedding under its trademarks in mutually exclusive territories. The question presented is whether this allocation of territories violates Section 1 of the Sherman Act.

STATUTE INVOLVED

Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, provides in pertinent part:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *.

STATEMENT

This case began as a civil action, brought by the United States, charging that Sealy, Inc. had violated Section 1 of the Sherman Act by conspiring with manufacturers who make and sell bedding products under Sealy's trademarks to fix the retail sales prices of such bedding products and to allocate mutually exclusive sales territories.[1] After trial, the district

[1] Three other cases were brought at the same time which challenged price-fixing and territorial allocation arrangements virtually identical to the ones challenged in this case. In two of these cases consent decrees were entered in which the com-

court held that Sealy had violated Section 1 by agreeing with the manufacturers upon minimum retail prices and by inducing retailers to adhere to such prices, and issued an injunction (R. 153–156). But it held that the exclusive territorial arrangement did not violate antitrust law and dismissed that count of the complaint. Since Sealy did not appeal the finding of illegal price-fixing, the sole issue here is the legality of the territorial restriction. On that issue the district court's findings and the undisputed documentary evidence show the following:

The Sealy trademark was first registered by the Sealy Mattress Company, a division of Sugar Land Industries (Fdg. 17, R. 68), and until about 1920 Sealy products were manufactured solely by the Sealy Mattress Company at its four factories in the midwest and southwest. In the early 1920's, Sugar Land Industries began licensing independent bedding manufacturers to manufacture bedding products under the Sealy name, and by 1923 some 19 independently owned factories were operating under Sealy licenses (Fdg. 18, R. 68; Tr. 58). In 1923, Sugar Land decided to withdraw from the bedding business, and granted an option to purchase all of Sealy's intangible assets (license contracts as well as trademarks) to E. E. Edwards (Fdg. 18, R. 68; GX 2A, R. 186–188), who together with the Sealy licensees created a separate corporation to exercise his option. This cor-

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panies agreed to eliminate territorial restrictions. *United States* v. *Restonic Corp.*, 1960 Trade Cases ¶69,739 (N.D. Ill.); *United States* v. *Spring-Air Co.*, 1962 Trade Cases ¶70,402 (N.D. Ill.). The other case is awaiting trial. *United States* v. *Serta Associates, Inc.* (N.D. Ill., Civ.—60–C–843),

poration (Sealy Corporation), the stock of which was owned by Edwards and the licensees, licensed the use of the Sealy mark to the independent bedding manufacturers who held stock in it, but it did no manufacturing itself (Fdgs. 19–22, R. 68–69; GX 1, R. 161; GX 2A, R. 168–171).

Beginning in 1925 the licensees agreed upon a system of allocating exclusive territories for the marketing of Sealy products. Each manufacturer was assigned an exclusive territory in his license contract and prohibited from selling Sealy products outside of that territory (Fdg. 27, R. 72; GX 4, R. 205; GX 27, R. 234–261). Although territorial boundaries were originally determined by freight costs, the licensees voted in 1925 to fix boundaries permanently and to disregard future changes in freight rates (Fdg. 28, R. 72–73; GX 4, R. 205). Subsequently, however, the stockholders authorized the president to redetermine territories so that each licensee's sales area would be proportional to his shareholding of Sealy stock (GX 31–E, p. 3–7247 (unprinted)).

In 1933, when the number of Sealy licensees had dwindled to eight (primarily because of "depression-caused financial difficulties"), Sealy Corporation was reorganized into the present Sealy, Incorporated (Fdgs. 32–35, R. 74–75). At the first executive committee meeting following the reorganization a proposal "to divide the entire United States between the present group [of licensees] was seriously considered and discussed at length" but was rejected (Fdg. 86, R. 91–92; GX 8, R. 213). The licensees agreed, however, to continue the system of exclusive terri-

tories (Fdg. 27, R. 72; GX 8, 214; GX 27, R. 234–261). To discourage incursions, the licensee-manufacturers agreed to pay a fine of $10 to Sealy, Inc. for each violation of a neighboring licensee's territory. Sealy, Inc. would then turn over the fine to the licensee whose territory had been violated (see, *e.g.*, GX 1012, R. 1001–1002). With the Sealy price scale beginning at $19.75, the $10 fine represented as much as 50 percent of the selling price of a number of items in the Sealy catalog (Fdg. 128, R. 105; GX 31–E, R. 273). Provision was made for expansion of the Sealy group by the allocation of territories to new licensees, but it was stipulated that any new manufacturer coming into the organization would be required to purchase stock in Sealy, Inc. in order to qualify it "as one interested in [Sealy's] success." (GX 31–E, R. 272.)

In the 1940's, Sealy's royalties began to increase; merchandising, advertising, and research were stepped up; and many new licensees were brought in to cover territories that had previously been left open (Tr. 66–73). When disputes over the territorial boundaries arose between licensees, Sealy encouraged the disputants to resolve their differences among themselves (Fdg. 30, R. 73).[2] Sealy's usual position in territorial disputes was that of an impartial referee whose

[2] For example, in the spring of 1948, the Los Angeles and Denver licensees each claimed the right to serve the State of Arizona, and the Los Angeles licensee wrote to the president of Sealy, Inc. (GX 167, R. 416):

> * * * It appears from Morris Stein's answer to my letter that it will be up to the Executive Board or Board of Directors

function was to keep peace among its licensees (see, *e.g.*, GX 164–175, R. 410–430; GX 205–206, R. 473–474; GX 229, R. 501–502; GX 243–A–244, R. 518–519; GX 248–A, R. 523–524; GX 268, 272; R. 543–544, 549).

Approximately 30 licensees—all of whom hold stock in Sealy, Inc.—are currently manufacturing bedding products bearing the Sealy label (Fdg. 12, R. 66; GX 31–F, R. 277; GX 1012, R. 997). The licensees as a group own approximately 90 percent of the stock,

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to adjudicate and protect Sealy of California's franchise rights for the Arizona and Nevada territories.

We leave this matter in your capable hands.

The president responded (GX 167–A, R. 417–418):

> * * * [T]his letter is written to both parties with the thought in mind of trying to bring this thing to an amiable conclusion without the necessity of action on the part of either the Committee or the Board.
>
> * * * * *
>
> I think the proper approach to this matter would be for each of you to sit down and compile a history of the business that you have conducted in Arizona by years and an outline of the exact territories that you have been servicing. With this information at hand * * * [you] should be able to come quickly to some amiable handling. * * *

Two months later, Sealy's president again wrote the two licensees (GX 169–A, R. 423):

> I hope that by this time you two boys have been able to get your maps out and have decided on the exact line of demarcation of the Arizona Territory.
>
> As soon as you have come to a gentleman's agreement relative to same, will you please advise me, so that we in the national office may prepare a supplement covering same?

Finally, in March 1949, the licensees advised Sealy that they had divided up the Arizona territory in a manner that suited them (GX 173–A, R. 428).

with no single licensee owning more than 14 percent; the remainder of the stock is held by Sealy officers (see GX 985, 991–D, R. 957–959). Sealy's bylaws limit membership on its board of directors to stockholders and to representatives of licensees (GX 31–F, R. 277; GX 981, R. 948).

Sealy's activities include coordinating and placing national advertising, engaging in product research, registering new marks, and seeking out new licensees (it does no manufacturing itself). Sales of trademarked bedding by all licensees totalled $56.4 million in 1958, and $58.6 million in 1959, generating royalty income for Sealy, Inc. of $1.2 million and $1.4 million in those years. The income of individual licensees ranged between $533,000 and $6.5 million, with more than three-fourths falling into the $1–$3 million range. (Fdgs. 11–14, R. 66–67.)

Despite the expansion that has taken place since 1933, the corporate structure of Sealy, Inc. and the operation of the territorial allocation plan remains basically unchanged. Each licensee is restricted to sales within his allotted territory. Sales outside of that territory, or sales within the territory to a distributor or dealer planning to resell outside, are expressly forbidden by the contract between Sealy and the licensee. (GX 1012, R. 1002; GX 1014, R. 1019; GX 1015, R. 1035; GX 1016, R. 1051; GX 1017, R. 1097; GX 1018, R. 1118; GX 1020, R. 1163; GX 1051, R. 1182; GX 1061, R. 1199; GX 1064, R. 1219; GX 1065, R. 1240; GX 1074, R. 1262; GX 1085, R. 1282; GX 1086, R. 1303.)

ARGUMENT

Introduction and Summary

The appellee—Sealy, Inc.—is a joint venture of a number of bedding manufacturers to hold and exploit the "Sealy" trademark. Each of the manufacturers is licensed by Sealy to manufacture and sell "Sealy" bedding in a particular area and permanently forbidden by the license agreement to sell elsewhere. The sole issue here is whether this territorial restriction shall be deemed an unlawful trade restraint under Section 1 of the Sherman Act without a trial upon the issues of competitive effect and economic justification—in terms familiar to antitrust, whether the restriction is illegal *"per se"*. Since it is well settled that agreements between competing sellers to divide marketing territories are illegal *per se*, the question may also be stated as whether a different rule should govern an indefinitely continuing division effectuated through the kind of trademark licensing arrangement employed by the Sealy companies.

To frame the issue, it is necessary to consider briefly the nature and rationale of *per se* rules. These are simply substantive rules of antitrust law which the courts have developed in the course of applying the general language of Section 1 of the Sherman Act to concrete cases. Where the complaint charges a *per se* violation, the only factual issue is whether the defendant engaged in the practice alleged—not whether, in the circumstances of the particular case, the adverse competitive effects of the practice so outweigh any asserted justifications as to make the practice an

unreasonable restraint of trade. *Northern Pac. R. Co.* v. *United States,* 356 U.S. 1, 5.

The *per se* principle is thus one of judicial economy, enabling drastic simplification of the issues in many antitrust cases. This Court has often remarked upon the exigent need for such simplification. *E.g., Northern Pac. R. Co.* v. *United States,* 356 U.S. 1, 5 (n. 3, *infra*); *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 362; *Standard Oil Co.* v. *United States,* 337 U.S. 293, 313. Proliferation of the areas of factual inquiry makes antitrust litigation protracted, unwieldy, and expensive, straining the resources of government enforcement agency and private litigant alike. Moreover, the litigation process is ill suited to the digesting and ordering of complex masses of economic data; therefore, broadening the scope of inquiry to include every conceivably relevant fact may more often impair than enhance the correctness of the decision. Most important, perhaps, simplification of substantive antitrust principles is necessary if the antitrust laws are to be reasonably certain and predictable in their application; and without reasonable certainty, widespread voluntary compliance with those laws can hardly be expected.[3]

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[3] As the Court explained in the *Northern Pacific* case (356 U.S. at 5)—

> This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. * * *

These are weighty considerations in antitrust administration. They have properly been held to justify blanket condemnation of a number of business practices which in a few cases may be harmless or even beneficial. Price fixing is perhaps the classic example of a practice so inherently opposed to the policy of competition embodied in the antitrust laws that it is condemned without consideration of the actual impact upon that policy in the particular case. Yet doubtless some price-fixing conspiracies have negligible or no adverse effect on competition or the price level—because they are not enforced or adhered to, the conspirators do not control a sufficiently large part of the market, there is adequate competition from substitute products, or the conspirators accidentally fix the price at the same level that free competition would have determined.[4] The courts, however, have uniformly deemed these considerations inadmissible—and rightly so. The probability of substantial competitive harm inherent in price-fixing conspiracies is too great, and the possibility of justification both too remote and too indeterminate,[5] to justify the loss in certainty and simplicity of administration that abandoning a *per se* approach would produce.

A similar analysis leads to the conclusion that the

[4] Conceivably, a very few price-fixing agreements may even be beneficent, by, for example, so minimizing severe market risks in highly cyclical industries as to lower long-run capital costs.

[5] For it will never be possible to know to what extent the actual motive of the agreement was merely to obtain greater than competitive profits.

type of arrangement for dividing territories involved in this case falls within the forbidden category. Its effect on competition is, if anything, more drastic than that produced by fixing prices: the direct elimination of all—not merely price—competition in the sale of the licensed product. This effect is not likely to be offset by competition from other brands, for the entire Sealy program presupposes that the Sealy brand has a distinct consumer appeal which insulates it, within a range at least, from the competition of other bedding brands.

The adverse effect of the territorial restraint cannot be justified as necessary to strengthen interbrand competition. First, the severity of the restraint far exceeds (as we show) what is reasonably necessary to protect the Sealy group's legitimate interests. Second, since the restraint is in effect imposed by the very firms (Sealy's licensees) who thereby achieve insulation from competition, one is entitled to view with considerable skepticism a claim that the purpose of the restraint is not to enable each seller to reap greater than competitive profits but to enhance interbrand competition. Nothing is more deeply rooted in our antitrust tradition than distrust of collaboration among competitors as a method of economic ordering.

The present case in thus significantly different from *White Motor Co.* v. *United States*, 372 U.S. 253. In that instance territories were allocated by a single manufacturer among his distributors and it could be argued that the restriction was imposed in the interest of the manufacturer as a necessary step to achieve effective distribution. Here, however, exclusive ter-

ritories were allocated among manufacturers of the same product by a trademark licensor whom they controlled, and while we do not argue that Sealy, Inc. was no more than a facade for a conspiracy to suppress comptition (it had other purposes which were lawful) there is no escaping the conclusion that in such a case—unlike a true "vertical" restraint—competition has in effect been eliminated by the action of the competitors themselves.

Thus the case closely resembles the classic division-of-territories agreement whose *per se* illegality is conceded. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6), affirmed, 175 U.S. 211; *United States* v. *National Lead Co.*, 63 F. Supp. 513 (S.D.N.Y.), affirmed, 332 U.S. 319; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593. It is immaterial that the division is among sellers of the same brand; for the rule against resale-price-maintenance agreements attests that the interest in vigorous intra-brand competition is sufficient to support a *per se* rule against territorial restraints of long or indefinite duration. It is immaterial that the division was nominally imposed by a third party (Sealy), for that third party is controlled by the sellers whose territories it allocated. And it is immaterial that the allocation arises in the context of a trademark licensing arrangement, for the trademark law confers no antitrust immunity.[6] One other difference between

[6] The Lanham Act expressly provides that a trademark may not be "used to violate the antitrust laws of the United States" (Section 33(b)(7), 15 U.S.C. 1115(b)(7)), and this Court has held specifically that trademarks may not be used as a justification for dividing territories among competitors. *Timken Roller*

this case and the classic division-of-territories case lies in the fact that the agreement here is part of a joint venture by a group of manufacturers to supply themselves with a national brand name. But the difference is quite unimportant. Although temporary territorial restrictions ancillary to a legitimate joint venture may perhaps be justified if they promote new entry, the permanent restrictions at issue here, imposed by a well-established firm, cannot be defended upon such basis.

I. THE HARMS TO COMPETITION WHICH INHERE IN THE TERRITORIAL RESTRICTION OF THE SEALY LICENSING AGREEMENT ARE GREAT. THEY ARE NO LESS THAN THOSE OF PRACTICES TRADITIONALLY CONDEMNED AS ILLEGAL *PER SE*.

The Sealy plan of territorial allocation, embodied in every Sealy licensing agreement, divides the nation into as many areas as there are licensees and assigns each licensee to a different one of these areas. The licensee may not manufacture or sell Sealy-brand bedding outside his assigned area, nor may he sell within the area to a dealer or distributor who intends to resell without. Under such an arrangement, the production and sale of the branded product is

Bearing Co. v. *United States*, 341 U.S. 593, 598–599. Moreover, any controls upon a trademark licensee must be "legitimate" (15 U.S.C. 1055, 1127), this provision having been added at the urging of the Antitrust Division to prevent abuse of the licensing privilege. Hearings on H.R. 82 before a Subcommittee of the Senate Committee on Patents, 78th Cong., 2d Sess., pp. 58–71. See, also, Schniderman, *Trade-Mark Licensing—a Saga of Fantasy and Fact*, 14 Law & Contemp. Prob. 248, 260–261; Note, 68 Harv. L. Rev. 814, 899–900.

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divided up into a series of regional monopolies. Competition at the manufacturing level is totally foreclosed. The foreclosure is even more complete than that effected by a price-fixing agreement, under which the parties are free to compete in respects other than price.

Nor can it be doubted that significant competition in the sale of the brand is in fact eliminated by the restriction. If freight or other cost barriers locked each licensee into his allotted area, there would be no occasion to forbid him to sell outside, and licensees would not—as appellee admits and emphasizes they do—insist upon the protection of the territorial restriction (Motion to Affirm, pp. 10–11, 15–16).

It is true that the restriction does not shield the licensees from competition from other brands of bedding. But this is not to say that it is ineffectual to give each licensee a significant power over price and quantity—a monopoly, albeit (like all monopolies) a limited one, which he would not otherwise enjoy. The proclaimed purpose of Sealy, Inc. is to create a distinct consumer preference for Sealy over other brands of bedding, and we cannot assume that the extensive advertising and promotional efforts of Sealy and its licensees have failed to create a distinctive image and unique demand for Sealy bedding—a degree of differentiation sufficient to give each licensee a margin of freedom in pricing Sealy products[7] so long as he is protected from the competition of other licensees. See, *e.g.*, Bain, *Barriers to New Competition*, pp.

[7] Sealy licensees are free to sell other brands without any territorial restriction.

114–115; cf. *Federal Trade Commission* v. *Borden Co.*, 383 U.S. 637.

Were that not so, it would be difficult to understand the licensees' insistence (see p. 14, *supra*) upon territorial exclusivity. Protection from the competitive inroads of the relatively few manufacturers who compose the Sealy system and who in the aggregate compose but a small segment of the bedding industry would be futile if the competition from other brands were as effective as competition within the Sealy family. The principal justification suggested by appellee for the territorial restriction—that Sealy cannot attract licensees without offering them protection against competition from existing licensees—presupposes that the restriction is an effective method for reducing the competitive pressures upon the manufacturers who are party to the scheme.

In this respect the restriction at bar is very much like a price-fixing agreement. In price-fixing cases, delineation of a relevant market is not required, proof that the parties occupy a dominant market position is inadmissible, and agreements involving sellers of a single brand are proscribed without regard to the strength of the competition from other brands (*e.g.*, *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U.S. 373). This drastic limitation of proof is justified by the invidious purpose of all price-fixing agreements—to place a floor under the parties' prices. To be sure, that purpose can be achieved only if the parties have some power over price—some range within which they are insulated from attempts of sellers who are not

parties to the agreement to cut prices.* Lacking such power, sellers who make price-fixing agreements are engaged in an exercise in futility. The rare instances in which such efforts are pointless hardly deserve consideration. The policy of antitrust law warrants condemnation of the effort itself. *A fortiori,* it warrants the conclusion that these possibilities may be disregarded in formulating general rules.

The agreement to divide territories that is in issue here likewise presupposes that to grant each licensee an exclusive territory is to give him substantial protection against competition. In these circumstances, we believe it appropriate to presume without evidentiary inquiry the adverse competitive impact of the restriction. But we do not argue that this in itself justifies the application of a rule of *per se* illegality. It is also necessary to consider whether the likelihood that the restraint, notwithstanding its severity, may have a pro-competitive justification is sufficiently great to warrant putting the issue of justification to proof.

II. THE POSSIBILITY THAT THE SEVERE RESTRAINT INHERENT IN THE PERMANENT DIVISION OF TERRITORIES HERE (A RESTRICTION IMPOSED, IN EFFECT, BY THE SELLERS THEMSELVES) IS A JUSTIFIED ONE IS TOO REMOTE TO WARRANT A TRIAL ON THE POINT. A RULE OF *PER SE* ILLEGALITY IS THEREFORE APPROPRIATE.

In Point I, we considered the dangers to competition presented by a territorial restriction like that at

*The Sealy manufacturers assumed they had this power—for, the district court found, they conspired to fix the resale price of Sealy products. They could not have done this successfully if other bedding was completely interchangeable with Sealy bedding in the consumer's mind.

bar, and we concluded that their substantiality was too clear to require proof. But what of the possible redeeming benefits of such restrictions? May they outweigh the harms in enough cases to make a rule of *per se* illegality inappropriate? These questions remain for our consideration.

A. THE POSSIBLE JUSTIFICATIONS ARE TENUOUS IN THE EXTREME

We begin by reviewing the justifications that have been—or could be—advanced in defense of an allocation, unlimited in duration, of exclusive territories among licensed manufacturers of a trademarked product. The ostensible purpose of the Sealy licensing scheme, as we have noted, is to strengthen the competitive position of a group of manufacturers by the creation of a distinctive brand identity in the minds of consumers. Implementation of this purpose has several aspects: trademark protection; promotion of the Sealy brand; and exploitation of the consumer demand thus created, both by signing up an adequate number of licensees and by assuring that each assiduously cultivates his market for the brand. None of these functions, we submit, requires or justifies a permanent territorial restriction.

(1) There is no danger that without the restriction the Sealy trademark might be forfeited[9] or its value diminished. Licensed as it is to numerous unaffiliated manufacturers, the Sealy mark in no event serves to identify the company that produces the trademarked item. Its function—clearly a legitimate

[9] In suggesting that there is such a danger, *Denison Mattress Factory* v. *Spring-Air Co.*, 308 F. 2d 403 (C.A. 5), was, in our opinion, in error.

and sufficient basis for trademark protection under the Lanham Act—is quite different: to indicate a product that is uniform because its quality is controlled, albeit it is manufactured by more than one firm. See 15 U.S.C. 1055; Schniderman, *Trade-Mark Licensing—A Saga of Fantasy and Fact,* 14 Law & Contemp. Prob. 248; Comment, 72 Yale L. J. 1171. If Sealy maintains adequate quality control, the public has no interest in the particular manufacturer and the trademark is secure and its worth unimpaired. *Dawn Donut Co.* v. *Hart's Food Stores, Inc.,* 267 F. 2d 358, 366–367 (C.A. 2); *Alligator Co.* v. *Robert Bruce, Inc.,* 176 F. Supp. 377, 378–379 (E.D. Pa.). If the quality of the product varies from manufacturer to manufacturer, the Act is violated because all of the goods covered by a trademark must be the same in nature and quality (15 U.S.C. 1055). In either event a territorial restriction is wholly irrelevant.

(2) Successful fulfillment of the Sealy group's promotional activities does not depend upon a territorial restriction. It is, to be sure, possible that without division of territories some licensees might benefit more from national advertising by Sealy, Inc. than others.[10] But that would be easily correctible by requiring each licensee to contribute to the advertising budget of Sealy, Inc. in proportion to his sales, a solution that would avoid the drastic anti-competitive effects of the territorial restriction. It is likewise

[10] However, it would appear that the same possibility exists despite the territorial allocation, since advertising in even a national medium may have a greater impact in some areas than in others.

conceivable that a Sealy licensee would be reluctant to engage in local advertising to back up Sealy, Inc.'s national program if the sales generated by his efforts could be skimmed off by other licensees. But all businessmen run the risk that their advertising may inadvertently benefit their competitors; that has not discouraged advertising. Moreover, since mattresses are bulky and shipping costs must therefore be high, each Sealy manufacturer enjoys an inherent competitive advantage in his home area, so that even without a territorial restriction he is likely to be the principal beneficiary of local advertising.

In this connection, it is relevant to note that from the standpoint of the policy of the antitrust laws a restriction designed to increase advertising expenditures is, at best, a mixed blessing. While advertising may promote competition by broadening the consumer's range of choice, it may also weaken competition by raising the barriers to new entry into a market or industry and by impairing the position of smaller firms that cannot spend heavily for advertising. See Bain, *Barriers to New Competition*, p. 142. The very success of the Sealy scheme may make the bedding industry one where only a very large firm or one that belongs to a Sealy-type group can survive.[11] If competition within such groups is foreclosed, the ultimate result is likely to be a severe diminution in the amount and vigor of competition in the industry.

[11] Six manufacturing groups in the mattress industry are operating under Sealy-type arrangements. Hearings on S. 1396 before the Subcommittee on Patents, Trademarks, and Copyrights of the Senate Judiciary Committee, 87th Cong., 1st Sess., p. 43.

(3) Also unpersuasive is the suggestion stressed by appellee in this Court (see p. 14, *supra*) that manufacturers cannot be induced to accept a trademark license unless assured of protection against competition by other licensees and that therefore the territorial restriction is necessary to enable Sealy bedding to compete effectively against other brands. We agree that it is often desirable to encourage new entry into an industry and that high initial or starting-up costs may place the new manufacturer at a serious disadvantage in competing with established firms. But this would at most justify a temporary territorial restriction for new members of the Sealy group (Sealy itself not being a new entrant); it would not entitle long-established members of the Sealy group to the permanent benefit of exclusive territories. Perpetual protection against intra-brand competition, which penalizes the efficient members of the group and shields the others from the consequences of their inefficiencies, limits competition far more drastically than the difficulties of new entry can reasonably be thought to require.

Nor is it a plausible supposition that the effectiveness of each licensee's exploitation of the consumer demand for Sealy products is increased by limiting him to a particular territory. The territorial restriction has apparently had a contrary effect: licensees jealously hold on to areas that they are unable to exploit adequately.[12] Insistence that each licensee

[12] The president of Sealy compared the licensees to "the child who has three large lollypops the size of which is such that she cannot put more than one in her mouth and, there-

shoulder primary responsibility for cultivating a particular territory would (without precluding competition among the licensees) serve the interest of the Sealy group as a whole better than an ironclad division of territories. More Sealy bedding would be sold if licensees were free to sell outside their assigned territories in areas which, for one reason or another, were not being exploited to the maximum. The necessity for the restriction is further doubtful since it is in each licensee's own interest to exploit intensively his immediate area, where it is presumably cheaper (because of lower shipping costs) for him to sell.

B. WHATEVER PLAUSIBILITY THE SUGGESTED JUSTIFICATIONS FOR THE TERRITORIAL RESTRAINT MIGHT OTHERWISE HAVE IS CRITICALLY UNDERMINED BY THE FACT THAT THE RESTRAINT WAS—IN EFFECT—IMPOSED BY THE VERY SELLERS WHO HAVE THE MOST TO GAIN FROM ELIMINATING INTRA-BRAND COMPETITION

We have suggested that the arguable justifications for a perpetual allocation of exclusive territories

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fore, the other two virtually are of no particular value to her, but you know how kids are, try and get them to give up anything that they have. The similarity might sound strange, but that is exactly the same position I find myself in when I ask any Sealy licensee to relinquish a little piece of territory regardless of how miserable a job they may be doing in it." (GX 385, R. 683.) Thus, although it was agreed as early as 1936 that licensees should release territories to attract new licensees into the system (Fdg. 89, R. 92), efforts to secure economic coverage of the whole country and to limit licensees' preserves to "normal trading area[s]" were a never-ending uphill struggle (see Fdg. 89, R. 93; Fdg. 90, R. 93; Fdg. 91, R. 93; Fdg. 97, R. 95; Fdg. 98, R. 95). As late as 1956, a management consulting firm, making recommendations concerning the rearrangement of territories in order to obtain complete coverage, pointed out that "many licensees are not exploiting all their territory" (Fdg. 108, R. 100).

among the licensees of a trademarked item are exceedingly tenuous. We think they are plainly too tenuous to warrant the taking of evidence.[13] But we need not rest solely on that proposition. There is an additional highly material consideration here—that the source of the territorial restriction is not an independent third party but the very sellers whom the restriction is designed to shield from competition. This factor, as we shall show, serves sharply to distinguish the present case from *White Motor Co.* v. *United States,* 372 U.S. 253, where this Court reserved decision on whether to apply a rule of *per se* illegality to territorial restrictions imposed by a manufacturer on his distributors.[14]

The self-interest of a manufacturer lies in compressing his distributors' profit margin as far as is compatible with effective distribution. If, therefore, a manufacturer insists that his distributors agree to a territorial restriction, there is some basis for assuming that the primary purpose and likely effect of the restriction may be to enable the manufacturer to compete more effectively with other manufacturers, rather than to enable the distributors to enjoy the fruits of monopoly. If the distributors were the

[13] Since, as we have shown, a permanent (or very long-term) territorial restriction like that at bar is in any event broader than reasonably necessary, the doctrine of "ancillary restraints" is clearly inapplicable. *United States* v. *Columbia Pictures Corp.*, 189 F. Supp. 153, 178 (S.D. N.Y.),

[14] The Court deemed a decision on the question premature since (1) it was the first case involving such a restriction to come before the Court and (2) there was no record, the case having been decided in the district court on motion for summary judgment.

source of the restriction, the natural assumption would be the opposite: that it was indeed a device whereby the distributors expected to attain a level of profits that free intra-brand competition would prevent. "If it were clear that the territorial restrictions involved in this case had been induced solely or even primarily by appellant's dealers and distributors," the restrictions would be illegal *per se*. *White Motor Co.* v. *United States*, 372 U.S. 253, 267 (Brennan, J., concurring); cf. *United States* v. *General Motors Corp.*, 384 U.S. 127.

It is conceivable that distributors might agree not to compete with each other in order to strengthen the brand rather than in order to reap monopoly profits. It is similarly conceivable that a group of manufacturers of different brands of a product might divide territories in order to strengthen their competitive position vis-à-vis other manufacturers of the same or competing products—yet despite this possibility it is well settled that such divisions of territory are illegal *per se*.[18] The courts have wisely recognized that the desire for the enhanced profits that insulation from competition enables is in the vast majority of cases the decisive motivation for entering into such agreements, and that other reasons are so unlikely to be the real or principal reasons that they may be disregarded.

This principle is equally applicable where the manufacturers of a single brand agree not to compete in the sale of that brand. The possibility that they are

[18] The decisions in this Court so holding are cited at p. 12, *supra*.

motivated more by concern with promoting interbrand competition than by concern with reaping monopoly profits—even if such could be proved—is, we submit, too remote to require evidentiary inquiry, especially when we recall how inherently unlikely it is that a perpetual division of territories is truly necessary to the promotion of the brand. One is entitled to doubt that justifications so tenuous constituted the real motive for the restriction.

Nor is there doubt that the territorial restriction in this case is, despite the mediation of Sealy, Inc., in essence one imposed by the licensees themselves. Sealy, unlike a manufacturer in relation to his distributors, is not an independent firm responsive to interests other than those of its licensees. It is completely dominated by the licensees. More than 90 percent of its stock is owned by individual licensees and the balance is owned by Sealy's officers, whose positions depend upon the good will of the licensees. Independent direction of the corporation is further precluded by the provision of the bylaws barring from the board of directors anyone who is not a stockholder or a representative of a licensee.

The pattern of Sealy's ownership might, perhaps, not be a controlling consideration if its income were so great that the licensees' stake in its prosperity as stockholders was comparable to their interests as licensees. But Sealy's income, generated by royalties from the licenses, is equal to only about 3 percent of the licensees' total sales of Sealy products (see GX 1107, R. 1315–1319). For the licensees to operate Sealy so as to maximize its profits rather than their

own would be a clear case of the tail wagging the dog. We think it obvious, therefore, that the policies of Sealy—including the territorial allocation it nominally imposes on the licensees—reflect not an independent judgment on how best to increase the sales of Sealy products as a whole but the licensees' collective judgment on how best to maximize the profits of each.[16] Thus, there is every reason to believe that these territorial restrictions were designed solely or primarily to allow the Sealy manufacturers to escape competition—just as if they were the product of agreement among the licensees directly.

We do not suggest that all restrictive agreements that are illegal *per se* when considered alone are also illegal *per se* if adopted in the context of a joint ven-

[16] If Sealy were independently run, it would surely not tolerate the inefficiencies stemming from licensees' jealous insistence upon holding on to areas within their assigned territories which they cannot adequately exploit (see p. 20 and n. 12, *supra*). Nor would it tolerate the mislocation of factories and warehouses that has apparently resulted from the territorial restriction. Thus, a 1954 report of Sealy's Planning and Expansion Committee commented that "many trading areas in this entire country are not producing the volume of Sealy business, that could reasonably be expected * * *. We believe that in many instances, territories are entirely too far from the sources of supply, or in other words, that they are entirely too far from the Sealy plant which serves them. Therefore, additional factories, or warehouses, should be established to serve those areas. That solution, or some other, undoubtedly can be or at least should be found to bring all territories up to the reasonable par, and by so doing, it undoubtedly would increase the overall volume of Sealy, Inc., tremendously" (GX 77, R. 356–357; Fdg. 45, R. 79).

ture. Such agreements may be legal when necessary to further the purposes of a legitimate such venture. See *United States* v. *Columbia Pictures Corp.*, 189 F. Supp., 153, 178 (S.D.N.Y.).[17] For the reasons set forth above, however, there is little if any possibility that a restriction like that at bar can be justified even in the context of a joint venture. The possibility of justification is so remote that a rule of *per se* illegality seems clearly appropriate.

So urging, we rely upon a combination of factors: the danger to competition that the restriction imports; the lack of plausibility of the suggested justifications for so severe a restraint on competition; and the source of the restraint—the competitors themselves. Taken together, these factors indicate a restraint so inherently likely to be undue and unreasonable that it should be so regarded as a matter of law. The likelihood of harm to the interests protected by the antitrust laws far outweighs the chance that the restraint may be innocuous or beneficial. This justifies, in the interest of effective antitrust administration, a definite rule outlawing the practice. While we argue neither that all practices which foreclose intra-brand competition are illegal nor that competitors may never, regardless of circumstances, agree among themselves not to compete,[18] we submit that when all of the critical

[17] For example, it may be necessary for a legitimate selling agency selling abroad to allocate sales among its members.

[18] Thus, we do not challenge the proposition that a firm which sells one of its plants may grant the buyer a reasonable covenant, limited in duration, not to compete with him. See, also, n. 17, *supra*.

factors are present—as in this case—the challenged practice is clearly "too dangerous to sanction" (*White Motor Co.* v. *United States*, 372 U.S. 253, 263).

CONCLUSION

The judgment below should be reversed and the case remanded to the district court with directions to enter an appropriate injunction against continuance of the territorial restraint.

Respectfully submitted.

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SEPTEMBER 1966.

APPENDIX

The exhibits in this case were offered and admitted in evidence at the following pages of the transcript of proceedings in the district court (unprinted):

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U.S. GOVERNMENT PRINTING OFFICE:1966

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 9

UNITED STATES OF AMERICA, *Appellant*

v.

SEALY, INC., *Respondent*

On Appeal from the United States District Court for the Northern District of Illinois

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Brief Amicus Curiae of Serta Association, Inc. and Thirty-Six National Manufacturers

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Brief Amicus Curiae of Serta Associates, Inc., and Thirty-Six Mattress Manufacturers

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This brief *amicus* is submitted, upon the written consents of the parties to this appeal on file with the Court, on behalf of Serta Associates, Inc., and the following mattress manufacturers:

Adam Wuest, Inc.	Cincinnati, Ohio
Alexandria Bedding Co.	Alexandria, Louisiana
Augusta Bedding Company	Augusta, Georgia
C. F. Lottman & Sons	Houston, Texas
Capital Bedding Company	Harrisburg, Pennsylvania
Chattanooga Mattress Co.	Chattanooga, Tennessee
Coyne Mattress Co., Ltd.	Honolulu, Hawaii
Dixie Bedding Co.	Greensboro, North Carolina
Dormae Products, Inc.	Austin, Texas
Enterprise Mattress Co., Inc.	Westbrook, Maine

Enterprise-Moakler Co., Inc.	East Cambridge, Massachusetts
Hand-Craft Bedding Corp.	Buffalo, New York
Herr Mfg. Co., Inc.	Lancaster, Pennsylvania
HonorBilt Products, Inc.	Philadelphia, Pennsylvania
Kentucky Sanitary Bedding Co.	Louisville, Kentucky
L. G. Doup Co.	Omaha, Nebraska
Mohawk Bedding Corp.	Utica, New York
National Bedding & Furniture Industries, Inc.	Memphis, Tennessee
Palm Beach Bedding Co.	West Palm Beach, Florida
Palmer Bedding Co.	Denver, Colorado
Palu Bedding Co.	Oklahoma City, Oklahoma
Puerto Rico Bedding Co.	Caguas, Puerto Rico
Quality Mattress, Inc.	Cleveland, Ohio
Royal Bedding Co.	St. Louis, Missouri
Salt Lake Mattress Mfg. Co.	Salt Lake City, Utah
San-Hygene Furniture Mfg. Co.	Akron, Ohio
Schultz & Hirsch Co.	Chicago, Illinois
Serta of Washington, Inc.	Washington, D.C.
Serta-RESTOKRAFT Mfg. Co.	Detroit, Michigan
Simon Mattress Mfg. Co.	San Francisco, California
Sleepmaster Products Co., Inc.	Newark, New Jersey
Sound Mattress & Felt Co.	Tacoma, Washington
Star Bedding of Pittsburgh	Pittsburgh, Pennsylvania
Superior Bedding Co.	Los Angeles, California
Supreme Bedding Co.	Phoenix, Arizona
The J. C. Hirschman Company	Indianapolis, Indiana

Serta Associates, Inc. is a trademark licensing company, from which the manufacturer *amici* hold licenses and against which a Government antitrust complaint is pending similar to the one against Sealy, Inc. that is the subject of this appeal.

This brief is submitted for the primary purpose of bringing to the attention of the Court certain industry facts and conditions deemed relevant to the underlying issues on this appeal—the effect of territorial exclusives on competition in the mattress industry and their legality as restraints reasonably ancillary to a valid trademark licensing arrangement. The struc-

ture, history and operations of Serta Associates, Inc. differ in some substantial respects from that of Sealy, Inc. and quite possibly from that of the other trademark licensing companies in the mattress industry, but we believe that all such companies serve a useful pro-competitive purpose and that the grant of territorial exclusivity to their licensees is necessary to their competitive functioning.

STATEMENT OF INDUSTRY FACTS

(a) The early history of Serta Associates, Inc.

Serta Associates, Inc. (then known as Guardian Knight Corporation) was founded in 1931, at a time when, for reasons which will shortly be set forth, conditions were quite critical for the independent mattress manufacturer. According to Census figures, the total number of mattress and bedspring establishments had declined from 1018 in 1925 to 781 in 1931 and 645 in 1933. Because of these critical conditions, many of the small, local manufacturers that subsequently formed Serta Associates, Inc. adopted and were proceeding to implement, prior to the stock market crash of 1929, a merger plan that would have involved their elimination as independent business entities. The financial, technical and economic details of a 25-company merger had been worked out, and the stock issue placed with Goldman, Sachs and Company.

When the 1929 crash caused abandonment of the proposed merger, Prof. Webster Robinson of the University of California developed an alternative plan, based on a field investigation of the mattress industry during prior years. This plan, which is in effect the present Serta trademark licensing system, involved the retention of manufacturing and distribution au-

tonomy by the individual manufacturer. It was based on an analysis of the technological and marketing revolution created by the emergence of the Simmons Company as the dominant national manufacturer of mattresses, and the competitive disadvantages this created for the small, locally-based mattress manufacturer, possessing limited financial resources and manpower.

In 1925, Simmons had introduced its "Beautyrest" innerspring mattress, a much better mattress than those then upon the market, which it advertised to sell at retail for $39.50. Although innerspring mattresses were not then unknown, their sales had been insignificant because they were much more expensive than the then prevalent cotton felt or hair mattress. Moreover, the Simmons "Beautyrest" was backed by an intensive campaign of national advertising. In 1928, Simmons spent $1,500,000 in advertising the "Beautyrest" and, in 1929, $1,700,000—figures completely out of the question for the small independent manufacturer. By virtue of this national advertising, Simmons' "Beautyrest" sales skyrocketed from 16,000 mattresses in 1925 to 300,000 in 1928, and the "Beautyrest" name gained wide public acceptance. See "Back to Beautyrest," Fortune Magazine, January 1937, page 120.

Moreover, the Simmons Company, by maintaining warehouses at many widespread locations, was able to avoid the prohibitively high costs involved in the shipment of small quantities of mattresses over long distances. On the other hand, such freight costs precluded the small independent manufacturer from shipping any significant distances.

In the light of these circumstances, Professor Robinson proposed, to the participants in the abandoned merger plan and others, that their best hope of being able to compete effectively with the Simmons Company was the formation by them of a company which would adopt and register trademarks, license them to the manufacturers, formulate rigid specifications for an improved mattress to which the licensees would adhere and engage in national advertising of the mattresses bearing the licensed trademarks. Guardian Knight Corporation (subsequently Sleeper Products, Inc., Sleeper, Inc. and Serta Associates, Inc., which shall all hereinafter be referred to as "Serta") was organized on January 30, 1931, with its shares of stock being issued to eleven manufacturers.

(b) The origin of Serta's territorial exclusives

Within two months of its organization, Serta entered into an agreement with Nachman Springfilled Corporation, a firm holding important patents on spring units designed for incorporation in innerspring mattresses. Pursuant to this agreement, Serta's licensees were granted the exclusive right to manufacture mattresses under the Nachman patents within a designated territory. They were however authorized to sell these mattresses anywhere in the United States.

At the outset, the freedom of Serta's licensees to sell anywhere in the United States created no problems, because they had been chosen with a view to their geographic location. The licensees' natural areas of sale, determined by costs of shipment, were such that they had never competed with one another; hence, there was no reason to limit their sales territory.

Serta's original efforts to extend its initial membership of eleven proved rather disappointing; despite continuous activity, very few new licensees were added. Prospective licensees had made it clear that they would be unwilling to contribute the funds needed for advertising the Serta trademarks, if another Serta licensee could freely capitalize on their investment and appropriate and dilute the good will which, as independent manufacturers, they desired to build up for themselves. Serta's Executive Committee, accordingly, on November 26, 1932, adopted a policy of assigning its licensees exclusive territories for the sale of Serta-brand products, recognizing that this was necessary to obtain new licensees and thus compete effectively with the Simmons Company.[1] After adopting this policy, Serta in 1933 acquired 11 new licensees and in 1934, 5 more licensees.

(c) Corporate and fees structure of Serta; its territorial allocation policy

Currently and for many years past, Serta's stock has been owned entirely by its licensees, with each of the thirty-six U. S. licensees owning 50 shares of stock and the four Canadian licensees owning from 15 to 50 shares. Each share of stock is entitled to one vote, and there is no cumulative voting. The officers and management of Serta, who are charged with running its day-to-day operations, are not licensees, or representatives or employees of any of Serta's licensees. Their goal has been to maximize sales of Serta-brand merchandise and to increase Serta's revenues.

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[1] Serta's licensees are not required to limit themselves to the sale of Serta-brand bedding, and Serta exercises no control, territorial or otherwise, over the manufacture or sale of such non-Serta products, which is substantial. See p. 15, below.

The major financial contribution of the licensees to Serta is a "market fee" assessed annually. In addition, each licensee pays a $10,000 annual "franchise fee," and makes smaller contributions to a "creative fee" and for national showroom charges. The "market fee," and half of the "creative fee," are assessed against the licensees in proportion to the "buying power index" of their respective territories. The "buying power index," which is published annually for each county in the United States in *Sales Management Magazine,* is established with reference to (1) the population of the county, (2) the total retail sales of the county and (3) disposable personal income after taxes ("effective buying income"). Since the licensee's fees are thus determined by the total consumer potential within his area, it is not in the licensee's interest to insist on holding territory which he cannot adequately serve; by giving up such territory, the amount of his fees due to Serta is reduced. Serta's records reflect at least six occasions on which individual licensees surrendered territories in Florida, Louisiana, Georgia, New Mexico, Texas and Ohio that had originally been allocated to them.

Serta's licensees are allocated no greater territory than they can reasonably be expected to service effectively. They are free to withdraw from Serta upon six month's notice, subject to the payment of all fees and charges then due and payable. Upon withdrawal, the licensee receives credit for the book value of his shares.

It has at no time been intended or proposed either by Serta or its licensees to limit the number of licensees, or to divide markets or territories among the licensees, or to fix permanent territorial boundaries

for licensees. On the contrary, Serta officials have constantly striven to find new licensees to replace licensees that have withdrawn or have proven ineffective, to obtain needed additional sources of revenue for national advertising, and to enable Serta products to be nationally distributed and thereby take full advantage of Serta's extensive national advertising. Thus, of the 36 current Serta licensees, 18 became licensees between 1931 and 1937, 6 between 1943 and 1949, 9 between 1950 and 1960, one in 1962, one in 1964 and one in 1966.

(d) The licensees' stake in the Serta trademarks

Since Serta's formation, the licensees have made substantial payments, both to Serta and to the advertising media, for the purpose of promoting the Serta name and trademarks and building up their own good will in their respective areas. These payments cover the expenses incurred in national magazine advertising; local newspaper advertising (which is "keyed" to the national magazine advertising); Serta's product and trademark development; and the maintaining by Serta of a national showroom in Chicago to take advantage of annual trade meetings and to serve as a showcase for Serta products. For competitive reasons, it is necessary to advertise not only the Serta mark but also numerous product marks designating various price and quality lines carried by Serta's licensees (see p. 13 and Appendix, "Suggested Prices for Mattress Lines," below). In addition to any special promotions on which Serta assists its licensees, it incurs specially heavy expenses for advertising during the industry-wide merchandise promotion periods that take place twice a year.

The sums expended by representative licensees over the years in promoting the nationally known Serta marks are indicated in the following tabulation.

Name of Licensee	Location	Time Covered	Amount Spent[2]
HonorBilt Products, Inc.	Philadelphia, Pa.	1933-1965	$ 971,370.23
Augusta Bedding Company	Augusta, Georgia	1934-1965	$ 482,616.42
Serta of Washington, Inc.	Washington, D. C.	1943-1965	$ 814,791.51
Palmer Bedding Company	Denver, Colorado	1947-1965	$ 444,327.08
Serta-RESTO-KRAFT Mfg. Co.	Detroit, Michigan	1954-1965	$1,291,142.73
Mohawk Bedding Corp.	Utica, New York	1955-1965	$ 359,719.30
Dormae Products, Inc.	Austin, Texas	1960-1965	$ 219,965.63

The national magazine advertising of Serta bedding is completely beyond the financial resources of the individual licensee. In 1966, a one-page, four color advertisement in McCall's Magazine costs $42,840, whereas a newspaper page (approximately twice the size of a magazine page) costs $894 in Austin, Texas and $2,066 in Memphis, Tennessee.

(e) Current competitive structure of the mattress industry

The competitive problem of the individual Serta licensee today is in essence what is was when Serta was created in 1931: How can a small independent mat-

[2] This figure does not include substantial amounts spent for local advertising of the Serta name and trademarks prior to 1961. The total amount assessed by Serta against the seven above licensees for the year 1966 is $363,645.75; this does not include additional expenditures made by the licensees directly.

tress manufacturer, with limited resources that restrict it to a single factory and a local market, compete effectively with large national integrated firms that are able to utilize the expensive media of national advertising and thereby reach a consumer market not reached by local advertising? In fact, the problem is more acute today, with the increased emphasis on, and greatly increased cost of, national advertising.

Simmons remains the dominant concern in the field. In 1959, the Serta licensees showed estimated aggregate mattress and box spring sales of about 33 million dollars, as compared with about 133 million dollars of total Simmons sales.[3] All Serta licensees are single establishment firms, whereas Simmons in 1960 had 13 plants and 60 warehouses scattered throughout the country.

In 1959, the volume of Serta sales by individual licensees ranged from a low of $183,809 to a high of $2,757,934; 11 licensees had less than $500,000 of Serta sales and 21, less than $1,000,000. Over the 14-year period, 1952 to 1965, inclusive, Serta's total national advertising expenditure on behalf of its 36 licensees amounted to $3,964,467, as contrasted with $28,087,412, or seven times as much, for Simmons.[4]

While Simmons is the dominant firm in the industry, the Serta licensees in their respective localities encounter strong competition from many other manufacturers, including other "national brand" companies

[3] See 1959 annual Simmons Report to Stockholders. Simmons, it should be noted, sells not only mattresses and box springs, but also dual purpose sleeping equipment competitive with the products sold by Serta's licensees and other items. However, mattress and box spring sales account for the bulk of its business.

[4] "National Advertising Investment," compiled and published by National Advertisers, Inc.

with nationwide advertising coverage and the licensees of other trademark licensing companies. Besides Sealy and Serta, there are other trademark licensing companies in the mattress industry such as, Spring Air, Restonic, Bemco and Sylcon, whose licensees have smaller aggregate and average sales volume than Sealey's and Serta's licensees. In Philadelphia, Pennsylvania, and Augusta, Georgia, the Serta licensees, in 1961, reported about 25 competitors in each of their respective areas.[5]

The current local competitive situation is substantially the same.[6] The prices at which mattresses are sold by the licensees to their department and furniture store retail outlets vary from licensee to licensee and are dependent on the active competition each licensee encounters within his local market, see p. 13, fn. 8, below.

ARGUMENT

I.

The Government's Speculations as to the Competitive Harm Caused by Territorial Exclusives Have No Basis in the Record, in the Facts of the Mattress Industry or in Sound Economic Theory.

The economic considerations advanced by the Government as supporting the application of the *per se* illegality rule to Sealy's territorial exclusives turn out, upon analysis, to be unproven assumptions, with no support in the realities of the mattress industry or the market place.

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[5] Hearings on S. 1396 before the Senate Judiciary Subcommittee on Patents, Trademarks and Copyrights, 87th Cong., 1st Sess., pp. 42, 46.

[6] See the statement of Serta's Augusta licensee in Hearings on Distribution Problems Affecting Small Business before the Senate Judiciary Subcommittee on Antitrust and Monopoly, 89th Cong., 2d Sess., Part 2, p. 704.

Thus, the Government's brief contends that the advertising and promotional activities of the trademark licensing groups create "a distinct image" and a "unique demand" for the trademarked bedding, and that a territorial exclusive consequently gives the licensees "a margin of freedom in pricing" the trademarked product they would not otherwise have (p. 14). More extremely, it is stated that the Sealy licensing program "presupposes that the Sealy brand has a distinct consumer appeal which insulates it, within a range at least, from the competition of other bedding brands," and that the net effect of a territorial restriction is "the direct elimination of all—not merely price—competition in the sale of licensed product" (p. 11).

There is, in our view, no basis of fact for these sweeping and dogmatic assertions.[1] The department and furniture stores to which the mattress manufacturer sells his product are price-conscious, experienced commercial buyers. Unlike the individual consumer, who might be influenced by ignorance, irrationality or non-economic considerations, these retailers are in a position to, and do, make a free choice from among the price and other inducements offered by Simmons, Englander, the licensees under a nationally known mark and other manufacturers engaged in promoting their respective brands. Hence, while the effort of all mattress manufacturers is to build up a "distinctive image" for their product, they do not succeed in establishing a "unique demand" for it.

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[1] Prof. J. M. Clark says with respect to Prof. Bain's study, upon which the Government's generalizations are based, that it "centers on collusive or quasi-collusive oligopoly, limited by potential competition and pricing to forestall the entry of new firms." *Competition as a Dynamic Process* (1961) p. 259. No such situation or practice is involved in this appeal.

Concrete proof of the licensees' lack of insulation from competitive pressures is supplied by the fact that the *wholesale* prices charged to the retailer for Serta bedding vary from licensee to licensee (and, within permissive Robinson-Patman limits, as among different retail customers), depending on competitive prices quoted by the twenty-five or so competitors that the licensee faces within his local market (see pp. 10-11, above).[8] Even in their consumer advertising, the licensees do not possess the "margin of freedom in pricing" their products that the Government imputes to them by virtue of their territorial exclusive. The prospective consumer is looking not only for a mattress, but for a mattress at a certain price level, and the advertising of Simmons and the other national brand manufacturers therefore always covers several lines of mattresses at different suggested consumer prices. The licensees must accordingly, for competitive reasons, follow suit and quote suggested consumer prices similar to those advertised by Simmons and other national manufacturers.[9] It is clearly the consumer, not the licensee, who calls this particular price tune.

The Government's *a priori* theory of product differentiation by trademark creating a unique demand for

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[8] In its complaints against Sealy, Serta and two other licensing organizations the Government charged a conspiracy by the licensees to fix resale prices to the consumer. There was neither a charge nor evidence of a conspiracy to fix the wholesale price to the retailer.

[9] See Appendix, "Suggested Prices for Mattress Lines", containing suggested consumer prices for a list of products offered by the Serta licensee and four competitors. The Government, in the consent judgments entered into with the Spring Air and Restonic licensing companies, has permitted the advertising of suggested consumer prices, thereby acknowledging its competitive necessity.

the trademarked product has limited business applicability. It may have some pertinence for luxury items such as perfumes, where advertising is directed to consumers making regular purchases and with relatively stable tastes, for whom price is a relatively minor consideration. It does not apply to mattresses, which are bought only a few times in a lifetime, where the consumer is so price-conscious that all advertising must carry a suggested consumer price, and regular periodic promotions stressing several price lines are a competitive necessity. "Industries differ in the elasticities of the demand functions which prevail under different kinds and degrees of product differentiation," J. M. Clark, *Competition as a Dynamic Process* (1961) p. 267. Certainly, no *per se* rule of antitrust illegality can be predicated on a criterion that at best applies to only a limited number of industries.

Thus, the territorial restriction does not have the noxious economic consequences attributed to it by the Government. Contrary to the abstract picture painted by the Government, the wholesale prices of the licensee are determined by negotiation with price-conscious, expert retailers, on the basis of price and other competitive considerations; the licensee must advertise several product lines, at suggested retail prices dictated by standard consumer expectations and by industry custom; and the licensee, far from having any immunity from competition, must continually struggle to maintain (and hopefully to increase) his share of the total consumer demand for mattresses. As a major competitive tool in this continuing struggle, the licensee has the good will that he has built up under the licensed mark and the morale of his marketing organization, which the Government now seeks to impair and erode by depriving him of territorial exclusivity.

The Government's brief asserts, without proof, that the main motivation behind the territorial restriction is to insulate the licensee from competition emanating from other licensees (see p. 15). Were this in fact the licensees' motivation, the first thought of Sealy or of Serta would have been either to prevent their licensees from selling non-Sealy or non-Serta mattresses or to place territorial restrictions on such sales. Yet, the record is uncontroverted, and the Government's brief concedes (see p. 14, fn. 7) that Sealey's licensees are free to sell non-Sealy brands free of any territorial restriction, and the same is true of Serta's licensees. Thus, in 1959, the non-Serta bedding sales of ten Serta licensees ranged from 45 percent to 77 percent of their total mattress sales; that of thirteen, from 15 percent to 44 percent of their total; and only ten showed non-Serta sales amounting to less than 15 percent of their total.

Another recurrent, related but equally unsupported motif in the Government's brief is the claim that the purpose underlying the territorial exclusive is to enable licensees "to attain a level of profits that free intra-brand competition would prevent" and to reap "monopolistic profits" (see pp. 22-25). The fallacy underlying this contention has already been demonstrated; the same competitive pressures that serve to keep the licensees' wholesale prices in line (see p. 13, above) necessarily affect their level of profits and keep them from rising to a "monopolistic" level. Where, as in the mattress industry, "the competition is between a substantial number of competitors of unequal size but not-too-unequal strength, their rivalry is likely to generate a cross-elasticity of demand that will prevent quasi-monopoly profits from arising," J. M. Clark, *Competition as a Dynamic Process* (1961) pp. 262-3.

The Government's position is further contradicted, for the mattress industry, by the fact that, for the year 1964, the Serta licensees' percentage of profit to sales amounted to 3.23 percent, as compared with an industry-wide average of profit to sales of 3.71 percent.[10]

It is strange indeed to base even market analysis, much less to justify a principle of absolute legal liability, on as elusive and mythical a concept as "monopoly profits." In actual markets, as opposed to the theoretical models of some economists, the level of profits is an unreliable guide to the identification of monopoly power, Edwards, *Maintaining Competition* (1949) p. 125. It is even stranger to see "monopoly profits" advanced as a justification for a *per se* rule of antitrust illegality, for the courts have recognized that the level of profits (like the level of prices) is irrelevant where either illegal monopolization or *per se* antitrust illegality is involved, see *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 427-8 (C.C.A. 2); *United States* v. *United Shoe Machinery Co.*, 110 F Supp. 295, 325, 342 (D. Mass.) aff'd, 347 U.S. 521; cf. *United States* v. *Trenton Potteries*, 273 U.S. 392.[11]

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[10] The source for this information is a cost and profit survey compiled by Regardie and Brooks, for the National Association of Bedding Manufacturers. The Serta figure is based on information provided by 21 out of the 36 Serta Licensees, which is regarded as representative of all Serta licensees. Serta's licensees do not make cost and profit information available to Serta Associates, Inc. and submit it to Regardie & Brooks only on a confidential basis.

[11] Even were one to assume, *arguendo*, the Government's contention that the desire for "monopoly profits" is relevant to Sherman Act violation, the existence of such a desire can surely not be a matter of judicial notice. The obvious place to establish such a motivation is in the trial court, on the basis of a public record. The Government's own premises therefore run counter to, and not in favor of, the rule of *per se* illegality.

The Government's most intimidating spectre is that the advertising of the trademark licensing companies may

> "... weaken competition by raising the barriers to new entry into a market or industry and by impairing the position of smaller firms that cannot spend heavily for advertising. See Bain, *Barriers to New Competition,* p. 142. The very success of the Sealy scheme may make the bedding industry one where only a very large firm or one that belongs to a Sealy-type group can survive" (p. 19).

Here, again, it is pertinent to note that the study upon which this fear is based was focussed on oligopolistic situations where pricing is governed by the desire to forestall the entry of new firms—a situation which does not exist in the mattress industry (see p. 12, fn. 7, above). Also, the Government's undocumented concern with concentration trends is a speculative exercise, appropriate to the preventive philosophy underlying a Section 7 Clayton Act anti-merger proceeding but quite irrelevant to the laying down of a *per se* rule of illegality under the Sherman Act, which is directed against consummated restraints of trade.

There are economic as well as legal answers to the Government's Cassandra-like speculation on the shape of things to come. From the Census figures, there appear to be no barriers to new entry in the mattress industry, even for small firms. The number of companies in the mattress and box spring industry has increased from 842 in 1947 (the first year for which this information is given) to 1158 in 1958.[12] In 1958, there were 838 establishments in the bedding industry

[12] U.S. Census of Manufactures: 1958, Household Furniture Industry Report MC 58(2)-25A (1960), Table 1, p. 25A-4.

having 19 or less employees and 324 with from 20 to 49 employees.[13] Serta's licensees themselves are in the small firm, one establishment classification. Thus, in 1965, after several years of steady industry growth, out of 31 Serta licensees reporting, 2 were in the Census 10-19 employee classification; 13, in the 20-49 employee category; 9, in the 50-99 employee class; 6, in the 100-199 employee group; and one had 275 employees.

While there are no barriers to the entry of small firms into the mattress industry and no evidence of their elimination therefrom, they do encounter difficulties in competing with the "national brand" companies. In fact, the small independent has the same problems in this respect that the comparably circumstanced licensees of Serta would have if they could not rely on Serta's resources. Without Serta's trademark license, the substantial market reached by national advertising would be lost to the Serta licensee and the small independent alike; it would fall into the lap of the large "national brand" companies. Striking down the territorial restriction would therefore tend only to promote the concentration of business in the hands of the strong national bedding concerns; it would not aid the small independent.

The Government's brief indulges in the optimistic prediction that:—"Successful fulfillment of the Sealy group's promotional activities does not depend upon a territorial restriction" (p. 18). This surmise misconceives and confuses the basic issue, which is not simply the ability of Sealy to carry on national advertising nor the protection of the licensee from loss of sales to outside licensees. The fundamental problem is that, by depriving the licensee of a reasonable and

[13] *Ibid.*, Table 3, p. 25A-12.

competitively justifiable territorial protection, his individual good will be impaired and the morale of his organization disrupted, with the net result of putting in jeopardy the continued effective functioning of the trademark licensing arrangement and thereby lowering the competitive potential of the industry.

The Government's unsupported assumption that the trademark licensing company will continue successfully to carry out its functions has been flatly contradicted by a representative of one of the smaller licensing companies, who has stated that striking down the territorial restriction will drastically injure his company. Testifying before a Congressional committee, Restonic's representative pointed out that Restonic, which had entered into a consent decree to avoid the cost of litigation, had tried unsuccessfully to procure the consent of the Justice Department to the vacation of the decree and to afford Restonic an opportunity to defend before the District Court. According to Restonic's representative:

> "Since that time it has become increasingly evident that there is no benefit to the licensees if they cannot have exclusive territory within which to develop good will in the trademarked product. Many of Restonic's licensees are already in conflict in seven areas out of the areas in which Restonic-labeled merchandise is sold. Over the period since 1960 several of the licensees resigned and it has been difficult to get new ones. It is only because of the hope that the Sealy litigation now before the Supreme Court will be favorably decided or that the Congress will give relief by adopting the legislation which has been placed before it, that our organization is continuing against such odds."[14]

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[14] See Senate Hearings on Distribution Problems Affecting Small Business, *supra*, fn. 6 at p. 715.

It may be noted that Restonic's licensees are even less significant in the industry picture than Sealy's or Serta's licensees. In 1965, Restonic's 18 licensees, after a period of greatly increased industry sales, had a total annual sales volume of $7,500,000, only 50% to 60% of which represented Restonic trademarked bedding. The individual licensees' total annual sales (including non-Restonic bedding) ranged from approximately $118,000 to $1,300,000, with three licensees having a volume of $1,000,000 or over, four under $250,000, and the remainder from $250,000 to $600,000. Yet, the Government's proposed *per se* rule would deprive even these small factors in the industry of the opportunity to compete on a more equal basis with their larger trade rivals and at the same time preserve and develop their own good will.

Viewed in the sober perspective of the relevant and tangible market facts, the Government's fears of monopolistic and anti-competitive consequences for the mattress industry should this Court fail to adopt a *per se* rule on territorial restrictions are completely unfounded. They rest on speculative assertions and *a priori* economic hypotheses that are at best applicable to special kinds of oligopolistic situations not encountered in the mattress industry. They are so completely at odds with economic reality and sound economic theory as to suggest that the Government is not aware of "the economic and business stuff out of which these arrangements emerge," *White Motor Co.* v. *United States*, 372 U.S. 253, 263. Such fears, buttressed neither by fact nor by theory, do not furnish any valid basis for a rule of *per se* antitrust liability.

II.

The Admission of Evidence on the Competitive Justification for the Territorial Restriction Does Not Unduly Proliferate the Issues before a Court and is Consistent with Fundamental Antitrust Doctrine and Objectives.

The District Court in the present appeal held, at the conclusion of the Government's case and without any evidence being introduced by Sealy, that the Government had failed in its burden of establishing that Sealy's territorial exclusives violated Section 1 of the Sherman Act. That holding necessarily rendered as superfluous the introduction of evidence by Sealy as to the competitive justification for territorial exclusives. In this section of the brief, we take issue with the Government's position, implicit in its advocacy of the *per se* rule, that, had such evidence of competitive justification been tendered, it should have been excluded and, in particular, its rationalization of the *per se* rule as one of judicial economy.

The Government errs in its basic assumption that the alternative to the adoption of a *per se* rule is "broadening the scope of inquiry to include every conceivable relevant fact" (pp. 9-10 of its brief). The actual alternative is the admission of only such evidence as is relevant to the issue whether the challenged practice restrains competition. In a case such as this, where the Government's unilateral presentation resulted in 119 numbered paragraphs of findings of fact on the territorial issue, taking up 40 printed pages, and the record before this Court relevant to that issue consists of almost 1,000 pages of extracts from the Government's exhibits, it would not unduly swell the trial record to permit a defendant to introduce evidence on competitive conditions of the kind contained

in this brief's Statement of Industry Facts, most of which dovetails with the Government's evidence.

The Government's brief exaggerates the "proliferation of the areas of factual inquiry" (p. 9) that would result were the *per se* rule not adopted. Thus, we do not suggest that antitrust defendants may present evidence on whether their prices have been reasonable, the issue to which *United States* v. *Trenton Potteries,* 273 U.S. 392, was directed, or whether their level of profits has been low (see pp. 15-16, above). There is no thought of permitting the introduction of evidence on points relating to the business reasonableness (apart from restraint of competition) of the challenged practice, such as the quality of the goods produced, productive or technological efficiency or any of the other considerations that several writers have considered to be within the scope of the "rule of reason," see Blackwell Smith, *Effective Competition,* 26 N.Y. Univ. Law Review 405, 441 (1951). We do not share the Government's pessimistic view of the ability of trial judges to control antitrust litigation by excluding evidence with no direct bearing on the competitive process.

Sympathetic as one may be to the Government's plea for "simplification" of substantive antitrust principles, this does not extend to their modification. No rule based on administrative considerations of judicial economy supersedes the right of antitrust defendants to plead the reasonable ancillary restraint defense and to introduce evidence relevant to this defense, including that relating to the pro-competitive effects of a challenged practice. If the touchstone of a *per se* illegality of a challenged practice is its "pernicious effect on competition and lack of any redeeming virtue," *Northern Pacific Co.* v. *United States,* 356 U.S.

1, 5, it follows that antitrust defendants should be allowed to present evidence bearing on the salutary competitive effect of the practice, unless it can be conclusively established that such salutary effects are *de minimis* and have "no redeeming virtue." This latter, as has been shown in the preceding section of the brief, the Government has failed to do.

The present appeal involves the territorial exclusive practice in the judicially novel context of a trademarked licensing program necessary to promote effective competition by small companies. Any court passing on such a novel situation is entitled to have before it, if the occasion requires, the market facts relevant to the competitive implications of the practice, as seen both by the plaintiff and the defendant. To hold otherwise would be to put procedural considerations of speed and simplicity of administration ahead of substantive antitrust considerations, and defeat antitrust objectives.

III.

Territorial Exclusives Granted by a Trademark Licensing Company to Small Mattress Manufacturing Licensees, Who are Also its Shareholders, Promote Competition, do not Unreasonably Restrain Trade and are Valid Ancillary Restraints.

Considering the congruity of purpose of Serta and its licensees, it is quite natural that Serta's interests as a trademark licensor should largely coincide with those of the individual licensees. However, this brief has pointed out the various factors in respect of which Serta's policies and position differ from those of its shareholder licensees—Serta's responsibility as a trademark licensor to impose specifications and quality control on its licensees, its desire to expand sales and revenues, its search for new licensees, the "buying

power index" fee system, Serta's withdrawal of territories that are not fully developed, its control over national advertising and the national showroom in Chicago. All of these factors combine to give Serta a pro-competitive, not a restrictionist, outlook. And the divergence between Serta's interests and those of its licensees support viewing the legality of its territorial exclusives as one would that of any other trademark owner imposing a like restriction on its licensees.

In *White Motor*, 372 U.S. 253, this Court reserved decision on whether the manufacturer of a nationally known and distributed branded product, with hundreds of well-equipped distributors, may allocate exclusive territories to such distributors for the exploitation of its brand. It would in our view be ironic if it should be held that a trademark licensing company, performing valid engineering, licensing, advertising and promotional services and motivated solely by the desire to expand its revenues and increase the competitive potential of its licensees, should be foreclosed from assigning exclusive territories to 30 or 36 local manufacturers, with small distribution staffs,[15] merely because the stock of the licensing company was owned by the licensees. But the law as we see it does not call for any such arbitrary and unreasonable result.

Rather than stress the points wherein Serta's interests diverge from those of its licensees, we approach the matter on the alternative assumption that Serta is, in economic effect, a joint venture of the Serta licensees, performing for the licensees a specific func-

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[15] On page 18 above, employment figures were given showing the small business nature of Serta's licensees. Of the licensees' total labor force, it is estimated that only 7% to 9% are sales and distribution personnel.

tion that they could not perform for themselves—that of national trademark promotion and advertising—and enabling them to compete for a segment of the consumer market that would otherwise be monopolized by the "national brand" companies. The individual licensees retain control over their manufacturing and distribution operations; engage in considerable local advertising and promotion; and are unrestricted, territorially or otherwise, with respect to their distribution of non-Serta products.

Accordingly, the purpose of the Serta "joint venture"—to make national advertising opportunities available to small firms that could not otherwise afford it—is much more limited in scope than that of the joint venture upheld in *United States* v. *Columbia Pictures Corp.*, 189 F. Supp. 153 (S.D.N.Y.), twice cited in the Government's brief. In that case, Screen Gems, a wholly-owned subsidiary of Columbia Pictures, a film producer, was granted by Universal, another film producer, the exclusive license for a 14-year period to distribute for television exhibition purposes Universal's entire pre-1948 library of approximately 600 films. Although Columbia and Universal were direct competitors, the Court upheld the arrangement on the ground that:

> "... it permits a producer (Universal) who does does not have the ability to engage in proper distribution to engage the distribution facilities (Screen Gems) of a producer (Columbia) who does. It also permits the distributing organization to continue its function, by replenishing its supply of product to distribute" (p. 178).

There have already been set forth in this brief the industry facts which establish territorial exclusivity

as falling within the doctrine of reasonable and permissible ancillary restraints, first enunciated in the classic case of *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.C.A. 6), *affirmed*, 175 U.S. 211, and recently applied in the *Columbia Pictures* case, from which we now quote.

The Serta territorial restriction "is reasonably necessary to the legitimate primary purpose of the arrangement, and of no broader scope than reasonably necessary" (p. 178). See *Denison Mattress Factory* v. *The Spring-Air Co.*, 308 F. 2d 403 (C.C.A. 5), so holding for another trademark licensing company in the mattress industry. Territorial exclusivity was a necessary condition of obtaining the participation of the licensees in the Serta joint venture, the purpose of which was not only legitimate but pro-competitive. It was also a reasonable and necessary means of preserving to the licensees their individual good will, the retention and development of which is essential to their effective competition.

The Government's brief concedes that temporary territorial restrictions may perhaps be justified if they promote new entry (pp. 13, 20), but argues that permanent restrictions stand on a different footing. On the contrary, our view is that, "reasonably necessary" as the territorial restriction was when the joint venture was organized, it has become even more so over the years, as the licensees have invested increasing amounts of money in the venture, are confronted with greatly accelerated advertising expenditures by the national brand companies and must, for valid competitive reasons, preserve their own good will from dilution. See pp. 8 to 10, above; cf. *Sandura Co.* v. *Federal Trade Commission*, 339 F. 2d 847, 853 (C.C.A. 6).

Nor does the territorial exclusive have any broader scope than necessary. Serta's licensees are not restricted in their substantial sales of non-Serta products; are not obliged to adopt a Serta trade name; are under a financial compulsion to give up their exclusives for areas where they cannot effectively compete; and may terminate their license on reasonable conditions at any time, and have done so.

The Serta territorial restriction "does not unreasonably affect competition in the market place" (189 F. Supp. at 178). In fact, it has enabled the Serta licensees to compete for a market from which, because of small size and resources, they would otherwise be foreclosed—the market reached by the national brand companies. It has not adversely affected the competitive potential of the small independents, whose limited resources would, in any event, not have permitted them to engage in more than local advertising or to reach for the national advertiser's market.

Clearly, the territorial restriction "is not imposed by a party or parties with monopoly power" (*ibid*), and we do not understand the Government to be contending that it is.

While the territorial restriction does operate to reduce competition among licensees with respect to Serta-brand products, that reduction of competition is, in the light of transportation costs, the expertise of the licensees' distribution organization and other factors, minimal, compared with the enhanced competitive potential that the over-all Serta arrangement brings to the market and the dilution of that potential that would be caused by abrogating exclusivity. Also, the territorial restriction with respect to the use of the Serta marks does not restrain the licensees, who are

able to, and do, compete with other Serta licensees across territorial boundaries by offering and selling non-Serta mattresses.

As was said in the *Columbia Pictures* case:

> "... even on the assumption arguendo that there was a reduction in competition by reason of the attacked clauses, the validity of the ancillary restraint is to be determined in light of its reasonableness *as viewed under all the circumstances*" (p. 179; italics supplied).

Viewed under all the circumstances, the territorial restriction appears to be clearly valid. Moreover, it is both an "allowable protection against aggressive competitors" and "the only practicable means a small company has" for competing for the important consumer market reached by national advertising, see *White Motor Co.* v. *United States,* 372 U.S. 253, 263. Certainly, the territorial exclusive practice involved in this case cannot be said to be one of those "which, because of their pernicious effect on competition and lack of any redeeming virtue, are conclusively presumed to be unreasonable and therefore illegal without inquiry as to the precise harm they have caused or the business excuse for their use," *Northern Pacific Co.* v. *United States,* 356 U.S. 1, 5. Properly concerned as this Court has been to apply the policy of the Congress to preserve the competitive role of small business and to avoid the trend towards industrial concentration (see *United States* v. *Von's Grocery Co.,* 384 U.S. 270; dissenting opinion of Mr. Justice Douglas in *Standard Oil Co.* v. *United States,* 337 U.S. 293, 315) it should affirm the validity of a practice which is both reasonable and necessary to the success of a trademark licensing program that has enabled small companies to compete against the giants of their industry.

CONCLUSION

The judgment below, as well as the principle that evidence relating to the competitive justification for territorial exclusives under a trademark license is admissible even in situations where an antitrust plaintiff has made out a *prima facie* case of restraint of trade, should be affirmed.

Respectfully submitted,

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December 21, 1966

APPENDIX*

SUGGESTED PRICES FOR MATTRESS LINES

TWIN AND DOUBLE BED MATTRESSES

Serta		*Simmons*		*Sealy*		*Stearns & Foster*		*Columbia*	
Serta Posture	$39.75	Olympic	$39.88	Golden Sleep Deluxe Golden Sleeper	$39.95 $39.95	Berkley Rodeo El Rancho Anniversary Special	$39.95 $39.95 $39.99	Delray	$39.95
Supreme	$49.75	Back Care 95th Anniversary	$49.88 $49.95	Quilt Supreme Golden Sleep Supreme	$49.95 $49.95	Viscount Anniversary Special	$49.95 $49.99		
Capri Ortholux Capri	$59.75 $59.75	Deep Sleep Deluxe	$59.95	Rest Guard	$59.95	Splendor	$59.95	Betsy Ross	$59.50
Serta-Rest Smooth-a-crat	$69.50 $69.95	N.A.		N.A.		Super Ladyfaire	$69.50	N.A.	
Perfect Sleeper	$79.50	Beauty Rest	$79.50	Posturepedic	$79.50	Correct Comfort	$79.50	Verte-bracer	$79.50
Perfect Sleeper Imperial	$89.50	N.A.		N.A.		Queen Victoria	$89.00	N.A.	

* Source: Shopping Survey (1965), prepared by MacManus, John & Adams, Inc., from information supplied by John M. Smyth Company, Carson, Pirie, Scott & Company, Marshall Field & Company and Serta Associates, Inc.

SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 9

UNITED STATES OF AMERICA,

Appellant,

v.

SEALY, INC.

On Appeal from the United States District Court
for the Northern District of Illinois

BRIEF AMICUS CURIAE OF RESTONIC CORPORATION

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BRIEF AMICUS CURIAE OF RESTONIC CORPORATION

Restonic Corporation, by and through its counsel, respectfully appears and files its brief amicus curiae in the above entitled cause. Consent therefor has been given and stipulated to by the parties hereto and is on file herein.

Restonic Corporation has been referred to in the footnote of appellant's brief, page 2, as one of the groups which signed a consent decree agreeing to eliminate territorial restrictions. It is interested in calling the Court's

attention to the reasons why it signed such consent decree so as to dispel any inference of any sort from the signing thereof prejudicial to the argument advanced by the appellee. Restonic is interested in the outcome of this case because a decision adverse to the Government's contention would permit it to apply for the vacation of the consent decree, with some hope of success, the District Court having retained jurisdiction to modify or terminate the provisions thereof.

Restonic is one of the smallest of the six manufacturing groups referred to in the footnote on page 19 of appellant's brief operating under the Sealy-type arrangement. As of December 31, 1965, it consisted of eighteen licensee members located in various parts of the United States. The individual licensee member's annual volume of mattresses and box springs in dollar cost varies from approximately $118,000 to $1,300,000, about three licensee members doing a million dollars or over, four under $250,000, and the others from $250,000 to $600,000. In 1965 the total volume of sales by group members approximated $7,500,000 in mattresses and box springs, approximately 50% to 60% of which represented Restonic trade-marked bedding. At present Restonic licensees cover most of the United States with the exception of the New England and Pacific Northwest areas.[1]

Restonic was organized in 1938 by a group of bedding manufacturers who held licenses to manufacture bedding under certain United States patents issued to Max Marsack and Sam Marsack, of Milwaukee, Wisconsin.

[1] Excerpt from statement of H. E. Dickinson, Vice-President of Restonic Corporation, submitted in connection with hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, Second Session, Pursuant to S. Res. 191, Part 2. Other factual statements hereafter contained are also from that statement.

These manufacturers had been paying royalties to individuals. It was found that great advantages could be gained by organizing these manufacturers into a group with a central office and the adoption of a common trade-mark by which the bedding manufactured under these patents could be offered to the public under such trade-name through a common national advertising program. One of the principal advantages was to place the small bedding manufacturer in a position where he could compete with the large independent manufacturers who featured a trade-mark product in national advertising programs.

A corporation was then organized, presently known as Restonic Corporation, and each of the licensees of the Marsack patents was eligible to membership therein. It was a non-profit corporation. Each of the licensees was required to subscribe to fifteen shares of stock at $10.00 per share. The by-laws provided that upon the withdrawal for any reason of any of the licensees his stock would be redeemed. A central office at Chicago, Illinois, was then opened and an executive was hired.

The costs of running Restonic Corporation and its national advertising program, including other services which were to be rendered by the central organization to the licensees, were to be borne ratably by the licensees according to the exclusive territory assigned to them and the number of mattresses manufactured under the Restonic labels. Since 1960, when exclusive territories were no longer assigned because of the action of the Government against Restonic Corporation, fees paid by the licensees are based on a percentage of sales volume.

The budget of expenses for the organization included the approximate expense for layouts for the national ad-

vertising program and the various services. The annual budget during the past few years for the national advertising program, the incidental expenses, and the other services afforded the licensees, has run on the average of approximately $200,000. The biggest item in the budget is for advertising in nationally circulated periodicals and preparation of advertising displays and materials for the licensees. This item absorbs approximately two-thirds of the contributions by the licensee members.

Restonic's budget for national advertising, and other services, is of such an amount that it would be impractical and uneconomical for the small manufacturer to spend the money required for the functions performed by the licensing organization because the smaller manufacturer operates only in a small area and it would be a waste of money for him to advertise nationally and produce the small quantities required of advertising materials. In fact it would not be financially possible for him to spend the money required for this purpose.

Under Restonic's plan the licensee manufacturer retained complete control over his own manufacturing and distribution, the only requirement of the licensing corporation being that he manufacture the trade-marked product according to specifications. The products sold by him without a label or under his own labels could be sold by him anywhere.

Since such group activity is the essential factor in providing a nationally recognized and advertised product for the small manufacturer member, it is extremely important that the licensee's sales of trade-marked products must be limited to a definite exclusive territory. This is true because he must be encouraged to further the advertising program of the group by local advertising and sales promotion of the national trade-marked product

and develop a demand within his normal trading area. Since he incurs the expenses of the local advertising and sales promotion, he must be given every opportunity to capitalize on such expenditures.

In actual practice the exclusive territories which have been assigned by Restonic did not exceed an area around the manufacturer's plant having in mind the capacity of such manufacturer to service such territory. It can readily be understood that without exclusive territories there is no point in a manufacturer licensee incurring either the licensing fees to his group or advertising and promotional expenses in his own locale. It would be senseless for him to expend large sums of money in the development of the goodwill in the trade-mark and have someone else come into his territory and usurp such goodwill.

In May, 1960, there was an indication, following a Grand Jury hearing at Chicago, that a civil action would be commenced against Restonic Corporation under the Sherman Antitrust Law. The company authorized its attorney, Mr. A. L. Skolnik, of Milwaukee, Wisconsin, to contact the Department of Justice in relation thereto, and after conferences and negotiations the company entered into a consent decree with the Government on May 27, 1960, restraining it generally among other things from allocating, dividing or apportioning territories, markets or cusotmers for the sale of such products. The decree also provided that each Restonic licensee must file with the court its consent to be bound by the decree as a condition to its right to continue as a licensee.

At the time of entering into this consent decree it was believed by the directors of the company that although it and its licensees were not in violation of the Sherman Antitrust Law in letter or spirit, the cost of engaging in

litigation with the Government was way beyond the ability of its licensee members to incur and that it would be better to enter into a consent decree and attempt to live thereunder. However, the decree, pursuant to stipulation, expressly provided that the court retain jurisdiction for the modification or termination of any of the provisions thereof.

Subsequent events, especially in certain areas of the United States where the licensees were close in territory, forcibly indicated that the licensing group's existence was doomed and Restonic Corporation had great difficulty in procuring from its licensees their individual consents to the decree.

Because of this a special meeting of the Board of Directors of Restonic Corporation was held on June 30, 1960, and it was resolved that if by July 15, 1960, a substantially greater number of consents from licensee members to the consent decree was not received than had been received up to that time, that counsel for the company and Mr. Dickinson were to contact the Department of Justice and attempt to procure its consent to vacate the decree of injunction in order to afford the licensee members of the company and the company an opportunity to defend against the charges set forth in the Government's complaint.

On July 18, 1960, Mr. A. L. Skolnik, counsel for the company, sent to Robert Bicks, Esq., Assistant Attorney General, Department of Justice, Washington, D.C., a letter stating that Restonic was compelled to ask for its day in court or for an appointment to discuss vacating the consent decree.

Subsequently Mr. Skolnik and Mr. Dickinson arranged for a conference at Washington in respect to the matter

and pleaded with the representatives from the Department of Justice to vacate such consent decree and give Restonic and its licensees the opportunity to defend the action. The Department of Justice refused to do so.

Since that time it has become increasingly evident that there is no benefit to the licensees if they cannot have exclusive territory within which to develop goodwill in the trade-marked product. Many of Restonic's licensees are already in conflict in seven areas out of the areas in which Restonic labeled merchandise is sold. Over the period since 1960 several of the licensees resigned and it has been difficult to get new ones. It is only because of the hope that the Sealy litigation now before this Court will be decided favorably to the groups generally that Restonic is continuing against such odds.

Restonic at no time conceded the correctness of the Government's position that assigning exclusive territories was per se violative of the Sherman Antitrust Act. Being one of the smallest of the six groups involved it could not take on the enormous expense of defending against the Government's position and had to be content to stand on the sidelines while the bigger of the groups involved would litigate the question.

We adopt and advance all of the arguments of the appellee on the proposition that assigning exclusive territories is not per se violative of the Sherman Antitrust Act.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 9

UNITED STATES OF AMERICA,
Appellant

v.

SEALY, INC.,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEE, SEALY, INC.

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IN THE

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BRIEF FOR APPELLEE, SEALY, INC.

OPINION BELOW

The district court's findings of fact and conclusions of law (R. 63-152) are unofficially reported in 1964 TRADE REG. REP. ¶71,258 (N.D. Ill.).

QUESTION PRESENTED

Sealy, Inc. (hereinafter "Sealy"), owning trademarks and patents and possessing processes and know-how for the manufacture of bedding products, is the successor in interest of a bedding manufacturing concern which sold certain of its manufacturing plants and licensed the purchasers thereof to continue manufacturing and selling under the name "Sealy" within specified areas, and thereafter granted similar licenses to a number of bedding manufacturers in

other areas. Are the territorial restrictions of Sealy's licenses illegal per se under Section 1 of the Sherman Act, without regard to their business purpose or overall competitive effect — and notwithstanding the fact that Sealy's licensees are unrestricted as to the areas in which they manufacture and sell their own-brand products— simply because the Sealy licensees, in the aggregate, own substantially all of Sealy's common stock?

STATEMENT

On this appeal, the Government seeks to expand the limited categories of arrangements classified as per se violations of the Sherman Act. Although the decision in this case will directly affect only the bedding industry of the United States,[1] acceptance of the Government's arguments would have a widespread effect upon the business community as a whole and disastrous consequences for the "franchise movement" and the multitude of small businessmen engaged therein.

This case reaches the Court in a peculiar posture. Pretrial and trial were carried out on the Government's theory that the territorialization allegations of the Complaint charged a "hard-core" violation of Section 1 of the Sherman Act, *i.e.*, that "Sealy, Inc. is no more than a facade," or a "front," which was "created and used [by the licensees] . . . to camouflage their own collusive activities under

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[1] United States v. Serta Associates, Inc., Civ. No. 60 C 843, N.D. Ill., is a companion action similarly challenging the territorial restrictions of the Serta concern and its bedding manufacturer licensees. Serta filed a brief amicus in this Court in White Motor Co. v. United States, 372 U.S. 253 (1963). Like proceedings against Restonic Corp. and Spring-Air Co. were settled by consent judgments, as noted in Brief for the United States, pp. 2-3, n.1 [hereinafter cited "GB ...."].

a trademark umbrella."[2] But on this appeal, the Government abandons this theory, stating that it does "not argue that Sealy, Inc. was no more than a facade for a conspiracy to suppress competition . . ." but that, by reason of the licensees' stock ownership in Sealy, "competition has *in effect* been eliminated by the action of the competitors themselves" (GB 12; emphasis added). Thus, the Government charges a kind of "constructive conspiracy" for which it would have this Court create a new class of per se offense.

The Government's evidence at the trial consisted of hundreds of documents—substantially all from the files of Sealy. The Government offered no evidence to show that the challenged licenses in fact restrained the bedding trade. At the conclusion of the Government's case the court denied Sealy's motion to dismiss but stated its opinion that the evidence on the division of territory issue failed to prove that Sealy's relationship with its licensees constituted a conspiracy in restraint of trade.[3] The court thereafter heard defense evidence on the resale price maintenance charge and, at the close of the evidence, it granted Sealy's renewed motion to dismiss the territorialization charge. It found that:

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[2] Plaintiff's Reply and Answering Brief, etc., p. 35, April 17, 1961; Plaintiff's Brief in Opposition to Defendants' Briefs, etc., pp. 12, 14-15, Oct. 12, 1961. See also Government's Post Trial Reply Brief, p. 8, July 2, 1964 (Sealy is "nothing more than a 'corporate veil' under the egis of which various independent bedding manufacturers . . . . allocate territories"), and notes 20, 21 *infra*.

[3] The district court denied defendant's motion because the territorial charge was included in a single-count Complaint with a resale price maintenance charge (see R. 15, 18). The court held for the Government on this latter charge, and no appeal has been taken from this part of the district court's judgment, which the Government has said contains "an appropriate injunction" (Jurisdictional Statement 6). It should be noted that this case involves no question of price fixing on sales by licensees *to* dealers.

> "Plaintiff's evidence, read as a whole, conclusively proves that the Sealy licensing arrangements were developed in the early 1920's for entirely legitimate business purposes, including royalty income to Sugar Land Industries, which owned the Sealy name, trademarks and patents, and the benefits to licensees of joint purchasing, research, engineering, advertising and merchandising. These objectives were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage" (Fdg. 119, R. 104).

The relevant facts, as shown mainly in the district court's findings and the Government's own exhibits, fully support the court's ultimate finding and demonstrate the lawfulness of the purpose and the procompetitive effects of the Sealy licenses.

A. Sealy and Its Business

For more than forty years, Sealy and its predecessors have been engaged in the business of licensing for royalties relatively small bedding concerns to manufacture and sell under the Sealy name and trademarks in different parts of the United States; it also furnishes to the licensees technical and managerial services and develops and carries out advertising and merchandising programs. Sales of bedding by the thirty Sealy licensees in 1959 were $58.6 million, and royalty income to Sealy was $1.4 million (Fdgs. 11-14, R. 66-67; Fdg. 119, R. 104). Contrary to the Government's Statement (GB 7), not the "income" but the annual "gross sales" of individual licensees ranged from a low of $533,000 to a high of $6.5 million during the years 1957-1959; the great majority of the licensees had sales between $1 million and $3 million (Fdg. 14, R. 67). The Government concedes that "the relatively few manufacturers who compose the

Sealy system . . . in the aggregate compose but a small segment of the bedding industry" (GB 15).

The district court found that as to their own-brand products the licensees are unrestricted as to territory, and the Government conceded that they can and do sell such products outside their Sealy territories (Fdg. 27, R. 72; R. 12).

Since a reorganization in 1933 when the present Sealy was incorporated, it has continued the kind of activities which had been engaged in by its predecessor, Sealy Corporation, *i.e.*, procurement of new licensees and expansion of sales coverage; engineering and research for production, specifications, and quality control;[4] trademark matters; accounting procedures; standardization of purchasing; and advertising, merchandising, and sales promotion services (Fdgs. 36-38, R. 75-76).[5]

Much of Sealy's effort has been in the area of advertising and merchandising; its advertising budget rose from $483 in fiscal 1935, to $846,920 for fifteen months in the years 1957-1958, to approximately $1,000,000 annually in 1960 (GX 33, p. 3-6671*; GX 662, pp. 3-6201-02*; Bergmann, R. 27; Tr. 2820**[6]). It is impossible for individual licensees

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[4] Sealy developed and required compliance with specifications for all Sealy products, and initiated a program for checking on the products manufactured by each licensee for conformity to such specifications (Fdgs. 37, 38, 41, 46, R. 75-77, 79).

[5] Shortly before the trial, Sealy's staff of professional, technical and clerical personnel numbered twenty-three persons (Fdg. 60, R. 84).

[6] Transcript pages on which exhibits cited herein were offered and received in evidence are listed in a table at the back of this brief. Where exhibits are cited that have not been printed in the record in this Court, the specific page number within the exhibit has been cited for convenience, and it has been marked with an asterisk (*). Similarly, where the trial transcript has been cited for testimony not printed, it is identified with an asterisk, *e.g.*, Tr. 100*.

to engage in national advertising owing to the local nature of their businesses and the fact that their sales would not support the expenditures necessary (Bergmann, R. 28; GX 662, p. 3-6202*; GX 1107, R. 1319-21). Sealy's national advertising includes special merchandising programs (Sealy's semi-annual promotions), which are supplemented by local advertising, sales portfolios, and dealers' aids. These promotional events are "vitally important" to Sealy licensees and account for approximately half of their annual sales volume (Fdg. 47, R. 80; Bergmann, R. 25-26, Tr. 2845-47*; see GX 618, p. 3-1944*).

Although substantially all of Sealy's stock for many years has been owned by its licensees, the evidence shows that Sealy has been operated as a separate entity, in its own interest, and not in the private interests of its licensees, as the Government suggests. The Sealy stock is owned in widely varying amounts by the stockholders and licensees and, with each share having one vote, Sealy has usually been subject to "control" by a group of only three or four stockholders (GX 981, R. 947; GX 985, R. 957; GX 991-H, R. 967-69). Contrary to the Government's assertion that no licensee owned more than 14% of Sealy stock (GB 7), one licensee and his family owned 25% (GX 985, R. 957; GX 991-H, R. 968).[7] This licensee—Brown, of Detroit—together with the Kansas City and Chicago licensee interests, owned about 49% of the outstanding stock; in combination with practically any other single stockholder, this group held voting control of the company (Fdg. 75, R. 87; GX 985, R. 957; GX 991-H, R. 967-69). Similarly, in earlier years, the Memphis licensee at times owned enough Sealy

[7] As in many closely held corporations, there have been limits upon the amount of stock one stockholder, or persons affiliated with him, could own—at various times 38% and 25% (Fdg. 69, R. 85; GX 981, R. 947-48).

stock to exercise voting control of the company if joined by only one or two other stockholders (Fdgs. 68, 72, R. 85-86).[8]

Sealy's by-laws provide that each director must be either a Sealy stockholder or the nominee of a stockholding licensee (GX 981, R. 948). There is no requirement in the modern Sealy contracts that licensees own stock in Sealy (see, *e.g.*, GX 1086, R. 1296-1314). Nor is there any restriction on the sale of Sealy stock only to licensees, although the stock carries preemptive rights and most of the stock is owned by licensees or persons having direct or indirect interests in licensee concerns (GX 981, R. 946-56; GX 1008, p. 3-5472*; Fdg. 74, R. 86; GX 1011, R. 990; GX 985, R. 957; GX 991-H, R. 967-69). Some stock is held by non-licensees, such as Earl Bergmann, Sealy's president in the 1950's (Fdg. 70, 73, R. 85-86).

The business of Sealy is "managed and controlled" by its board of directors; a quorum (eight) of the fourteen-member board can act with a majority (five); thus, five directors can make decisions for Sealy (GX 981, R. 948-50; GX 991-D, R. 958). Between its meetings, the executive committee of the board, composed of Sealy's president and five board members, acts by "vote of a majority of the whole Committee" (GX 981, R. 950).

When questions have arisen in Sealy concerning the interests of a particular licensee, *e.g.*, the termination of a license, the transfer of territory from one licensee to another, and the like, whether in the board of directors or executive committee, representatives (if any) of affected licensees were excused; "the licensees involved could not

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[8] Sealy's stock was placed on a regular dividend basis in 1946 (Fdg. 67, R. 85); it has increased in value from about $30 per share in 1936 to $352 per share in 1956 (Fdgs. 66, 76, R. 84-85, 87).

participate in Sealy's decision" (Fdg. 30, R. 73; see also Fdg. 104, R. 97; Fdg. 113, R. 102; Fdg. 117, R. 103). This avoided potential conflicts of interest, and was consistent with Sealy's policy that its board of directors should consist of "capable, energetic, ambitious and sound thinking men, who have the interests of Sealy, Inc., at heart . . ." (Fdg. 45, R. 79).[9]

B. Origin and Development of Sealy

The "Sealy" trademark has been used on bedding since 1889, and at least from 1918 to 1923 it was used on mattresses manufactured by Sealy Mattress Company, a division of Sugar Land Industries (Fdg. 16-18, R. 67-68). It is undisputed that until the early 1920's "Sealy" products were manufactured solely by this company at its four factories in the midwest and southwest, and that in 1923 Sugar Land Industries began to sell its "Sealy" plants to local interests, licensing each purchaser to continue to manufacture and sell Sealy products (GB 8; Gov't Pre-Trial Brief 5, Oct. 15, 1963). Sugar Land Industries also licensed other bedding manufacturers in different parts of the country to manufacture and sell bedding under the Sealy trade name and trademarks and, by the end of 1923, some nineteen plants were operating under territorially restricted licenses from, and paying royalties to, Sugar Land Industries (Fdg. 18, R. 68; GB 3). The evidence shows that Sealy is the successor in interest to this licensor, and that little has changed in the arrangement over the years except that licensee interests own the bulk of its stock. Nothing about the arrangement bespeaks a conspiracy to restrain trade.

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[9] In a speech to a 1948 meeting of licensees, the president of Sealy pointed out that Sealy "had delegated most of the work to a few men who had spent much time working entirely in behalf of Sealy, Incorporated, even though it meant sacrificing the time from their own individual jobs" (GX 964, p. 3-1738*).

In 1923, Sugar Land Industries granted to one E. E. Edwards an option to purchase all of the intangible assets of Sealy Mattress Company, *i.e.*, "patents, trademarks, copyrights, trade names, and good will," and "all license contracts and royalties and rights thereunder" (Fdg. 18, R. 68; GX 2A, R. 186-88). Edwards and two associates worked out a plan for organization of a new corporation—in which they would own 25% of the stock—to acquire the intangible assets of Sealy Mattress Company and continue to license mattress manufacturers (Fdgs. 19-22, R. 68-69; GX 1, R. 161; GX 2A, R. 189-91). The remaining 75% of the stock was to be issued to the licensees (Fdg. 20, R. 69; GX 2A, R. 191). Sugar Land Industries was to receive promissory notes from the new corporation, secured by a pledge of its stock and assets (GX 2A, R. 185-86, 190, 196-97). In 1925, Sealy Corporation was organized and the plan was effectuated (Fdg. 22, R. 69-70; GX 2A, R. 166-98; GX 3, R. 199-200; GX 4, R. 202).

At the time Sealy Corporation was organized, the licensees were operating in territories assigned to them by Sugar Land Industries.[10] It is undisputed that, ever since,

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[10] The Government's suggestion that in 1925 the licensees initiated a system of allocating exclusive territories for manufacturing Sealy products (GB 4) is unsupported by any evidence, and is contradicted by the specific finding of the district court that territorial licensing was engaged in by Sugar Land Industries in the early 1920's (Fdg. 27, R. 72), and by the following evidence: (1) organizational documents and minutes of the organizational meetings (GX 2A, R. 187, 193; GX 3, R. 200); (2) reference to a request by Sealy Corporation to an official of Sugar Land Industries to settle territory boundary questions (GX 11, p. 3-7135*); (3) reference in a listing of territories to an Iowa territory "as written and rates figured April 11, 1923," signed by Sealy Mattress Co. (GX 27, R. 238); and (4) references in the margin of the same listing to the dates "4-1-23" and "5-19-24" in connection with the Indianapolis and Memphis territories (GX 27, R. 235-36, p. 3-7253 (marginal notes unprinted)).

"Sealy" license contracts have authorized licensees to manufacture and sell "Sealy products"—manufactured according to Sealy specifications and sold with a Sealy label—only within prescribed territories, and that the licensors, from Sugar Land Industries to the present Sealy, have agreed not to manufacture, sell or license another to sell therein so long as the licensee continued satisfactorily to carry on the Sealy mattress business within the territory (Fdg. 27, R. 72; GX 27, R. 237; *e.g.*, GX 1012, R. 997, 998, 1000-01; GX 1086, R. 1296, 1297-98, 1301-03). It is also undisputed that "Sealy" licensees have never been restricted as to the areas in which they could manufacture and sell non-Sealy products (Fdg. 27, R. 72; GB 14 n.7).

Sealy Corporation paid a great deal of attention to the development of advertising and merchandising programs; it was recognized that the licensees could accomplish merchandising through the Sealy organization that "no one individual could do" (GX 1, pp. 3-7089-91*). In 1926, when Simmons began to advertise its "Beautyrest" mattress nationally, Sealy Corporation developed a competitive line and "began to advertise against the Simmons Company" (Bergmann, R. 25, Tr. 2831*). In 1927, the executive committee discussed national advertising of Sealy mattresses, and the record shows national radio broadcasting in 1928 (GX 5, p. 3-7053*; GX 6, p. 3-7167*).[11] In 1932, the suggestion was made to change the basis for royalties from sales to circulation of national publications in licensees' territories because, as a licensee stated, "the primary purpose of the organization is to secure national advertising, and that mainly is what each factory secures from the Sealy Corporation" (Fdg. 26, R. 71).

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[11] In addition, direct mail advertising was sent out by Sealy Corporation, and it prepared advertising leaflets and phonograph records for salesmen (GX 3, p. 3-7019*; GX 4, R. 203).

Other subjects engaging the attention of Sealy Corporation and its licensees included joint purchasing (GX 1, pp. 3-7086-88*, R. 164; GX 3, R. 201), financing dealers, grading cotton, packaging, new products, production machinery, and hotel exhibitions (Fdgs. 24-26, R. 70-72).

Frequently considered were ways and means of recruiting additional licensees in territories unlicensed or not adequately covered. In 1925, the executive committee discussed the possible licensing of factories in Boston, Philadelphia, Seattle, Mexico, and Canada (GX 3, pp. 3-7020-21*). A Boston licensee was still being sought in 1928 (GX 6, R. 206), and, in 1931 and 1932, E. E. Edwards was seeking good prospects where distribution gaps existed (GX 17, R. 225; GX 18, R. 227). The district court found that such activity could not "reasonably be expected of an organization formed or operated to divide the country among a group of competitors" (Fdg. 31, R. 74).

In 1932, Sealy Corporation's executive committee proposed a corporate reorganization owing to its financial difficulties and those of its licensees, whose numbers had dwindled from twenty-six to eight who were still active (Fdgs. 26, 32, R. 71, 74; GX 4, p. 3-7128*). Agreement was reached on cancellation of existing license contracts and revision of assigned territories; the objective was to have Sealy factories in forty listed cities in the United States and seven in Mexico, Canada, and Cuba, because "it was unanimously conceded that the mattress business is very nearly a local business, and it is practically impossible for a foreign factory to go into a local territory and secure any profitable business" (Fdg. 26, R. 71; GX 7, p. 3-7213*). Executive committee members were assigned to various sections of the country to solicit new licensees (GX 7, R. 209).

The reduction of royalties due to the decline in number of licensees led in 1932 to default by Sealy Corporation on the notes issued for purchase of Sealy Mattress Company (Fdg. 32, R. 74). Promoter Edwards reorganized the trademark owner and licensor as Sealy, Incorporated, the appellee, which carried on business in much the same manner as Sealy Corporation (Fdgs. 32-36, R. 74-75).

The search for new licensees to cover all parts of the United States and thus fully exploit Sealy's trademarks, patents and processes has never ceased (Fdgs. 84-109; R. 89-101). When the executive committee met and approved reorganization in July 1933, it considered a proposal "to divide the entire United States between the present group" (Fdg. 86, R. 91; GX 8, R. 213). *This proposal was rejected,* and instead it was "unanimously agreed that a large number of new factories be brought into" Sealy,[12] in order to increase royalties and expand national advertising (*ibid.*).[13]

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[12] As shown by the context, the rejection of this proposal amounted to a refusal by the licensees involved to assume responsibility for advertising and promoting Sealy in substantially larger territories than they then served.

[13] One later plan for recruiting licensees contemplated that an existing licensee would sub-license portions of his territory to other manufacturers, who would be responsible to the licensee and also would acquire Sealy stock from such licensee (GX 31-E, R. 272). At the same stockholders' meeting, in July 1935, at which this plan was adopted, the president was authorized to add virgin territory to the territory then assigned to each licensee, so that the population in his territory would be proportionate to his share of Sealy stock (GX 31-E, p. 3-7247*). Contrary to the implication at GB 4, *there is no indication that this was carried out,* and a year later, the sub-licensing plan was abandoned in favor of licensees' relinquishing unused territory to Sealy for assignment by Sealy to new licensees (Fdg. 89, R. 92-93; GX 33, R. 279-82). The principle became established—and was never again in question—"that 'the franchising of territories is an exclusive right that is the property of Sealy, Incorporated,'

The revised 1936 license contract in effect required each licensee to reduce his licensed territory to his "natural, or normal, trading area" by releasing unworked territory for relicense by Sealy to other manufacturers (*e.g.*, GX 1012, R. 997, 1001, 1009; GX 33, R. 280-81).[14] By the terms of his contract a licensee could only retain that territory in which he satisfied "the market and demand" for Sealy products, and in which he used his "best efforts to enhance the popularity and demand" for Sealy products (*e.g.*, GX 1012, R. 998). In 1937, Sealy established minimum royalties based upon objective standards for measuring a licensee's efforts (and his right to retain his territory); sales quotas were based upon "proper trading areas" and upon "buying power per family or per capita within each territory" (Fdg. 91, R. 93; GX 35, R. 294; see GX 932, R. 910).

As early as 1936, licensees voluntarily released territory to Sealy for reassignment to new licensees, and in 1938, after minimum royalties were established, as noted above, additional amounts of territory were ceded to, and again became the property of, Sealy (Fdgs. 89, 92, R. 92-94; GX 33, R. 281-82; GX 40, R. 301).[15] Procuring the release of

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and a licensee could not relicense territory to another plant" (Fdg. 87, R. 92; GX 234, R. 509).

[14] This contract reaffirmed the contractual right of a licensee to exclusive use of the Sealy name and good will in his assigned territory and provided for liquidated damages, payable by Sealy, for infringement of that right by Sealy or another licensee (*e.g.*, GX 1012, R. 1001-02). The same $10 liquidated damages provision was still in a 1956 Sealy contract, but there is only evidence that it was enforced once in that twenty-year period, when a licensee was paid $140 for shipment of fourteen mattresses into his territory (*e.g.*, GX 1094, pp. 3-331, 3-336, 3-345*; GX 492, R. 837).

[15] At the peril of cancellation of his license for failure to comply, modern Sealy contracts require each licensee to pay royalties to Sealy, the amount of which is determined by applying a declining percentage

territory not properly exploited and seeking new licensees were constant activities by Sealy, and the Government's implications that licensees jealously held areas they could not adequately exploit (GB 20 n.12, 25 n.16) are contrary to the preponderance of evidence and the district court's findings (Fdgs. 84-118, R. 89-104).[16]

The court cited as an excellent example of Sealy's efforts to broaden its distribution the evidence relating to the southeastern part of the United States, in which Sealy "obtained territory from old licensees, found new licensees, shifted territory among licensees, discontinued its contracts with some licensees, and finally found a satisfactory licensee for the Carolinas at Lexington, N. C., but never did, insofar as the record shows, settle on a suitable licensee for Georgia and Florida" (Fdg. 85, R. 91). Similarly, it was not until 1951 that Sealy found a licensee for the greater Philadelphia area—a firm which had no previous experience in the mattress manufacturing business (Fdg. 104, R. 97; Bergmann, R. 27). The district court found that, from 1933 "forward,

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(*e.g.*, 3% for first $1 million sales) to the licensee's sales or "sales par" within his territory, whichever is greater (*e.g.*, GX 1086, R. 1307). Sales par refers to the licensee's sales quota, and is determined by use of a United States Survey of Buying Potential Power for each county in the United States (GX 994*, GX 995*; see Fdgs. 82, 91, R. 88-89, 93).

[16] The Government relies upon a single, colorful statement made by Sealy's president when a licensee refused voluntarily to agree to modification of his contract, and upon reports indicating that Sealy's coverage of every county in the United States never attained a state of perfection (GB 20 n.12, 25 n.16). Any inference from these bits of evidence is rebutted by the numerous instances in which Sealy was successful in procuring the release of unused territory for reassignment; the contracts that were cancelled because of inadequate sales effort; and the fact that while Sealy was constantly striving to obtain the greatest coverage possible, licensees had contract rights which Sealy could not arbitrarily set aside.

and up to the latest times covered by plaintiff's evidence, the record shows that Sealy continued to seek new licensees to fill in parts of the country not adequately served by existing licensees. It is obvious that an essential inducement to prospective licensees—to get them to undertake the obligations of a Sealy license—was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties" (Fdg. 86, R. 91-92).

Whenever there were disputes over the boundaries of licensees' territories, Sealy would resolve them in the best interest of Sealy, although frequently requesting the disputants to try to compromise and propose a settlement to Sealy.[17] The Government has quoted at length an example of Sealy's handling of a dispute—over territorial rights to Arizona—but has told only part of the story (GB 5 n.2). *The dispute arose because Sealy had inadvertently included Arizona in both the Southern California and Denver licenses* (GX 169, R. 421-22). The Southern California licensee wrote to the Denver licensee and objected to the latter's selling into Arizona after having recognized the former's rights there for a number of years; he complained:

"Our many years of effort in developing Arizona for Sealy seems now in jeopardy because of an unauthorized sales organization creating confusion and doubt in the minds of the Arizona dealers" (GX 164, R. 410-11).

The Denver licensee stood on its contract rights, insisting that "we do own the Arizona territory" (GX 165, R. 412-13). Whereupon, the California licensee, as noted by the Government (GB 6 n.2), placed the matter in Sealy's hands. The president of Sealy sought an amicable settlement, but did not count himself out, as the Government's excerpt sug-

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[17] See Fdg. 30, R. 73-74, re Sealy Corporation's handling of disputes.

gests; after asking each licensee to review its history of servicing Arizona, he said:

> "With this information at hand, *I believe that the three people, namely the two Sealy licensees and the arbitrator, who can be either the president or legal counsel of Sealy,* should be able to come quickly to some amiable handling" (GX 167-A, R. 418, emphasis added).[18]

Ultimately, the State of Arizona was divided by Sealy on the basis of "practical service arrangements" (GX 167A-175, R. 417-30; GX 176, R. 431-32).

From time to time Sealy terminated the contracts of licensees for poor performance. For example, after a new Charlotte, North Carolina, licensee underwent a change in ownership, Sealy's board of directors voted to continue the license contract (Fdg. 116, R. 103; GX 624, p. 3-1852*; GX 625, p. 3-1853*), but two years later the board refused to renew it because the "manufacturing and sales facilities" of the licensee were "deemed inadequate" and "insufficient to meet the requirements of Sealy, Incorporated in the territory covered by the license" (Fdg. 117, R. 103; GX 632, pp. 3-1585-86*). A license contract for Kansas City was terminated because the licensee was not making a "satisfactory showing" for Sealy (Fdg. 114, R. 102). Not all of the turnover in Sealy licensees was due to termination by Sealy, however; the district court enumerated examples of contracts that were terminated at the request of licensees who withdrew because they wanted to be relieved of their contract obligations (Fdgs. 110-12, R. 101-02; Fdg. 115, R. 102-03).

On the record as a whole, the district court found that the evidence "negatives the existence in the origin of Sealy

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[18] It should be noted that the 1936 license contract provided for arbitration of any dispute between the parties (*e.g.*, GX 1017, R.1103-04). Only Sealy had the power to approve changes in assigned territories (*e.g.*, GX 1017, R. 1095, 1097; Fdg. 87, R. 92).

Corporation of a central conspiratorial purpose to divide the United States among competing mattress manufacturers" (Fdg. 25, R. 71; see also Fdgs. 24, 26, 31, R. 70-72, 74). It further found that Sealy Corporation's "entirely legitimate business purposes . . . were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage" (Fdg. 119, R. 104).

C. The Bedding Industry

Owing to the hard-core conspiracy theory upon which the Government proceeded from the outset of this case,[19] the record contains little information concerning the bedding industry or the economic consequences of Sealy's contracts. During discovery, the Government filed extensive briefs in support of a motion by Simmons Company to quash portions of Sealy's subpoena calling for data on its operations, asserting that the Complaint charged per se violations of the Sherman Act which rendered completely irrelevant the subpoenaed material tending to confirm the reasonableness of defendant's conduct.[20] The district court granted the

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[19] See note 2, *supra* and accompanying text. In Answers to Defendant's Interrogatories Served October 11, 1960 (p. 1-336) the Government charged that "the original member factories organized" Sealy "and used the corporation as an instrumentality to allocate exclusive marketing territory."

[20] See United States v. Serta Associates, Inc., 29 F.R.D. 136, 138 (N.D. Ill. 1961) (setting forth a brief opinion on an identical subpoena served by Serta upon Simmons; the Government's companion case against Serta is described in note 1, *supra*). The Government charged Sealy and its licensees with "collusive activities" to allocate territories, and argued that it was trying to "inveigle the Court to permit [it] to conduct an industry-wide inquiry so that [it] might demonstrate the reasonableness of [its] conspiratorial market division scheme." Plaintiff's Brief in Opposition to Defendants' Briefs Opposing Motions of Simmons to Quash, pp. 22, 60, Oct. 12, 1961.

motion to quash (unprinted order dated Dec. 15, 1961) and Sealy abandoned this line of discovery. The Government's position at trial was similar—objections to industry data were made on the ground that it was "totally irrelevant to the issues involved in this case" (see, *e.g.*, R. 24).[21] Nevertheless, certain basic industry information—received as "background" (*ibid.*)— appears in the record, and certain other information is available from reliable sources.

Between 400 and 500 companies belong to the bedding manufacturers association (Bergmann, R. 24), and Government counsel, specifically conceding that Sealy licensees "have many business competitors in the mattress industry," disclaimed any contention of a lack of vigor in interbrand competition (R. 33).[22] Such competition in the bedding industry was described by a district sales manager for Simmons Company as "very tough, very competitive," "vigorous," and "strong" (Hutchinson deposition, R. 33; see also Tr. 3062-63*). Competition among retailers also is vigorous, with literally hundreds of outlets—such as furniture and department stores and mail order houses—handling various brands of bedding in metropolitan areas (Goldstein deposition, Tr. 3140-41*; Graff and Pelts depositions, R. 38-40).

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[21] Government counsel also stated (R. 10-11): "The defendant, Your Honor, would like to make this a complex matter. There is, however, Your Honor, only one conspiracy consisting of two charges or terms of the conspiracy in this case. The first is that the defendant conspired to fix prices, and the second is that the defendant was engaged in a conspiracy to divide territories. Thus, there are two sets of facts, the existence or nonexistence of which are all that need be ascertained." He further stated (R. 12): "I am not interested in whether or not what . . . [Sealy] had done is reasonable. That is not at issue in this case."

[22] Government counsel also stated: "Simmons has got plenty of competition. Englander is there. There are many small local mattress industries competing" (R. 12).

National advertising and merchandising have become increasingly important in the bedding industry over the years since Simmons introduced and began advertising its "Beautyrest" mattress in about 1926 (Bergmann, R. 25-27; Hutchinson deposition, R. 29-30, 34-36; Musicus deposition, R. 36-38). Promotions like Sealy's semi-annual sales are an industry-wide practice and generate a substantial portion of bedding sales (Bergmann, R. 25-26, Tr. 2855*; Hutchinson deposition, R. 30; see also Tr. 3019-20, 3025-29*). In a brief the Government noted that, in addition to Simmons, "Englander, Stearn-Foster, Burton Dixie, Restonic and other mattress manufacturers and groups" engage in national advertising.[23]

Simmons, "far and away the leader in its industry" and the first company in its industry "to establish a consumer franchise through advertising," had 1959 worldwide sales of $133 million.[24] It operates out of fourteen plants and sixty-five warehouses throughout the country.[25] Englander, at the time of trial, was a privately held corporation, sales

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[23] Government's Post Trial Reply Brief, p. 12, July 2, 1964.

[24] Address by Grant Simmons, Jr., National Society of Security Analysts, Sept. 11, 1964; MOODY'S INDUSTRIAL MANUAL 972 (June 1966). In a recent trademark infringement action brought by Simmons Company, a district court found that Simmons:

> "has spent great sums in advertising its products and in establishing the name SIMMONS in the mind of the public. In the last twenty years, it has spent an average of two million dollars per year for advertising. Most of this expenditure was for advertising in magazines of national circulation, and in all such advertisements, the Plaintiff's name 'Simmons' was prominently displayed." Simmons Co. v. Baker, 200 F.Supp. 149, 151 (D. Mass 1961), *aff'd*, 307 F.2d 458 (1st Cir. 1962), 342 F.2d 991 (1st Cir.), *cert. denied*, 382 U.S. 820 (1965).

[25] Address by Grant Simmons, Jr., *supra* note 24.

of which are unavailable; in 1964 it was acquired by Union Carbide Corp., which had total 1959 sales of $1.5 billion (MOODY'S INDUSTRIAL MANUAL 2218-19 (June 1966)).

The president of Simmons has said that Simmons' "principal competitors are looseknit packs of local manufacturers who have banded together under group names to fight us."[26]

SUMMARY OF ARGUMENT

Having lost this case in the district court on a hard-core conspiracy theory, the Government now shifts its ground and argues that the Sealy arrangement is a joint venture which "closely resembles . . . classic division-of-territories" (*Cartel*) cases, and is per se unlawful—solely because of the restrictive territorial provision in the Sealy licenses and the ownership of the bulk of Sealy's stock by licensee interests. The Government does not directly attack the findings by the district court that the purpose of Sealy and its licensees was in no respect collusive or anticompetitive, but it does so indirectly. It points the fingers of "doubt," "distrust," and "skepticism," and asserts the unlikelihood that the "decisive motivation" for the arrangement is legitimate, relying upon such insinuations to take the place of evidence of unlawful purpose. Moreover, in place of record evidence as to the actual competitive effects (if any) of Sealy's territorial restrictions, the Government relies upon economic arguments and a fallacious analogy to price fixing. Upon the basis of such theorizing, the Government would have the Court find a "probability" of economic harm and "too remote" a possibility of justification to necessitate a trial on the effects issue.

Trial anew in this Court of the issue of conspiratorial purpose, which the Government in effect seeks, would contravene the rule of *United States* v. *Yellow Cab Co.*, 338

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[26] Address by Grant Simmons, Jr., *supra* note 2.

U.S. 338 (1949). But, aside from this, the judgment of the district court upholding Sealy's arrangement is fully supported by the evidence and the applicable law.

The present case bears no resemblance to the *Cartel* cases both because the fundamental purpose of the Sealy arrangement is entirely legitimate and because Sealy and its licensees concededly "compose but a small segment of the bedding industry." The suggestion that Sealy's arrangement amounts to a market sharing scheme is refuted by its continued quest for new licensees, both as replacements and to expand Sealy's distribution coverage, and by Sealy's separate existence as a profitable enterprise operated for its overall best interests, and not as a mere instrumentality or creature of its licensees.

Well established as part of the rule of reason governing application of the Sherman Act, the doctrine of ancillary restraints permits reasonable partial restrictions which are ancillary to the primary purpose of a lawful business arrangement. It serves the important function of permitting flexible adaptation of the Sherman Act to many commercial transactions where restraint of competition is plainly not the object of the parties and where the public interest is not jeopardized. Sealy's territorial provision comes squarely within this doctrine: It is ancillary to a lawful main purpose —the licensing of Sealy's trademarks, know-how and advertising-merchandising services, in exchange for royalties. The Government's arguments, seeking application of a per se rule in the face of the findings of fact making the ancillary restraints doctrine clearly applicable in this case, reflect an attempt to circumvent the principle of reasonableness upon which the doctrine focuses and, if accepted, would place the whole concept in jeopardy.

The territorial restriction of Sealy's licenses is necessary, reasonable, and in the public interest. Territorial protection

is necessary to induce small manufacturers to invest the required capital and effort to develop "Sealy" business in each territory. It is also well-adapted to the preservation of the validity of Sealy's trademarks as against the risk of confusion of the public through use of the mark by different manufacturers in the same markets. The territorial protection is reasonable owing to its limitation to "Sealy" products; Sealy licensees are free to manufacture and sell their own-brand products without restriction, and concededly do so, and since the licensees would not accept license obligations without territorial protection, no competition by one firm with another which might exist absent the licenses is eliminated. It is in the public interest because the Sealy name and supporting services furnished by Sealy provide the licensees with the means to produce uniform, quality goods and to compete effectively with large, integrated bedding competitors.

The Government's arguments here, analogizing the instant case to *Cartel* and price fixing cases, are almost identical to its arguments in *White Motor Co.* v. *United States*, 372 U.S. 253 (1963), and here, as there, they are completely without foundation. The Government also urges here, as in *White Motor*, adoption of a per se rule of illegality outlawing the arrangement challenged, with no evidence of its actual effect in the marketplace. Thus, the Government's contentions amount to an effort to relitigate *White Motor*, and they should be rejected.

The Government's economic arguments liken Sealy's manufacturing licensees to retail dealers in manufactured products, and its supporting legal arguments are rooted in cases outlawing unreasonable restraints upon alienation of commodities. But Sealy licensees are not dealers; rather, they have the same problems as other manufacturers who must establish and maintain distribution through a dealer or-

ganization, *e.g.*, giving the dealer something of a "franchise," and furnishing advertising and promotional support. Integrated manufacturers concededly have the right to select their dealers and limit the number appointed in a given market (a highly important consideration to dealers), and Sealy's licensee manufacturers must be permitted this right in order to be competitive. Otherwise, their dealer organizations would be jeopardized and, because neighboring licensees would be free to "skim off the cream," licensees naturally would reduce their efforts and expenditures in promoting the Sealy brand, and the brand ultimately would disappear.

The Government has established no reason whatsoever why a rule of per se illegality should be created and applied to territorial restrictions such as those here. Such a rule, with the harsh consequences noted above, would be stricter than would be applied to a Sealy-licensee joint venture under Section 7 of the Clayton Act, or to a merger of Sealy and the licensees, or even to a "tying" arrangement. Present law can reach market sharing conspiracies and arrangements which in fact unreasonably restrain trade; the rule urged by the Government would *also* outlaw an untold number of "franchise" arrangements, having no unlawful purpose or effect, to the serious detriment of numerous small businessmen.

A great many franchise programs involve territorial restrictions and adoption of a per se rule here would jeopardize inter-brand competition, in other industries as well as in bedding. Both the Small Business Administration and the Federal Trade Commission advocate a "rule of reason" rather than a per se approach to vertical territorial restrictions but, if the Government's "control" arguments here should be accepted, there would remain little basis for a distinction between vertical and horizontal

arrangements (a result which the Government sought in *White Motor*). Such a result would drastically affect the burgeoning "franchise" movement in a great number of fields—including the highly important programs in the wholesale and retail food industries—thereby contravening the national policy to foster small business. Only a rule of reason approach to such franchise agreements will permit the kind of case-by-case examination that will protect necessary and reasonable arrangements like Sealy's, while enabling the Government to attack such systems when they have an anticompetitive purpose or effect.

As a matter of justice and fairness, since the Government deliberately chose to keep out of the record evidence concerning the actual effect of Sealy's licenses, it should not now be heard to argue what the presumed effects would be, nor should the case be remanded to give the Government a chance to search for possible anticompetitive effects evidence which it obviously did not have at the time of the first trial. This is particularly true since this is the second time Sealy's territorial restrictions have been called in question under the antitrust laws. The Federal Trade Commission in 1944 issued, and thereafter tried, a complaint substantially like that here and, in 1948, it found no violation. No change in circumstances having been shown, further proceedings against Sealy would amount to harassment.

ARGUMENT

I.

The Trial Court's Judgment Is Fully Supported by the Facts and the Applicable Law

A. The Government Has Failed to Prove "Hard-Core" Conspiracy.

The Government tried this case as one involving a hard-core conspiracy specifically designed to eliminate competition in violation of the Sherman Act. It contended that the Sealy licensees were competitors who effected a division of territories among themselves for the sale of Sealy products, utilizing a licensing corporation that was nothing more than a creature of its licensees—a mere "cover" for a horizontal conspiracy of the kind held illegal per se in cases such as *Addyston Pipe & Steel Co.* v. *United States*, 175 U.S. 211 (1899); *United States* v. *National Lead Co.*, 332 U.S. 319, 343 (1947); and *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593 (1951).

Although a per se rule was followed in these classic *Cartel* cases, it was applied after careful consideration of the nature and purpose of the arrangement attacked, and after a determination that market division was a primary objective, and not merely incidental to a legitimate main undertaking.[27] Not only did the challenged arrange-

[27] In *Addyston Pipe*, the sole purpose and effect of an agreement among dominant manufacturers was to fix prices and divide territories; in the territory covered by the combination (over three-fourths of the United States) the parties controlled two-thirds of the industry output and had, and exercised, the power to fix prices. 175 U.S. at 235-36. In *National Lead*, it was found that the paramount purpose and the effect of the arrangements under attack were division of markets and suppression of competition for virtually all of the world's supply of titanium. 63 F.Supp. at 522-24. In *Timken*,

ments in these cases reveal "no purpose other than the elimination of competition", but they were found in cases where "all . . . competitors . . . as a group possessed substantial, and often dominant, market power."[28] This is not such a case.

Although the Government adduced reams of documents concerning the affairs of Sealy and its predecessors—from 1920 until 1960—the district court held that it failed to prove:

> "by a preponderance of evidence that defendant, Sealy, Incorporated, has engaged in a combination and conspiracy with its manufacturing licensees to allocate territory among competitors in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1" (Conclusion 3, R. 151).

This conclusion was founded upon 105 separate findings of fact, which in turn were based upon hundreds of exhibits, which were read, "cross-examined,"[29] and commented upon in open court. The trial court's ultimate finding on the

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the district court had found "that the 'trade mark provisions [in the agreements] were subsidiary and secondary to the central purpose of allocating trade territories'." They were *not* "merely incidental to an otherwise legitimate 'joint venture'," *nor* "reasonable steps taken to implement a valid trademark licensing system," but rather applied to 80% of all tapered bearings manufactured in the United States, Britain and France, and involved "an aggregation of trade restraints"; the restrictive agreements "went far beyond protection of the name 'Timken' and provided for control of the manufacture and sale of antifriction bearings *whether carrying the mark or not.*" 341 U.S. at 598-99, emphasis added.

[28] Att'y Gen. Nat'l Comm. Antitrust Rep. 26 (1955).

[29] When Government counsel finished reading portions of an exhibit, the trial court permitted defense counsel to "cross-examine" by reading other portions.

territorial issue was that the Government's evidence, "read as a whole, conclusively prove[d] that the Sealy license arrangements were developed . . . for entirely legitimate business purposes" and that Sealy's activities had "been directed not toward market division . . . but toward obtaining additional licensees and more intensive sales coverage" (Fdg. 119, R. 104).

The Government makes no direct attack upon any of the district court's findings—either as to the legitimate business purpose of the Sealy licenses or the independence of Sealy and the constructive nature of its activities. It does indirectly attack those findings, however, by asking the Court to infer improper purpose and to disregard the evidence of Sealy's independence. Thus, the Government actually urges this Court to "try the case de novo on the record," particularly as to the intent of the parties over a great stretch of years, directly contrary to the rule of *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 340 (1949).

The Government asserts that "one is entitled to view with considerable skepticism a claim that the purpose of the restraint is not to . . . reap greater than competitive profits but to enhance inter-brand competition" (GB 11). It further speculates that legitimate reasons for Sealy's restrictions "are so unlikely to be the real . . . reasons that they may be disregarded" (GB 23); it suggests "doubt that [legitimate reasons] . . . constituted the real motive for the restriction" (GB 24); and it concludes from the totality of the suspicions it raises by its own speculations that "there is every reason to believe that these territorial restrictions were designed solely or primarily to allow the Sealy manufacturers to escape competition" (GB 25).

Sealy has never contended that it is in business for the purpose of enhancing inter-brand competition, and there is

no evidence that it or its licensees have reaped "greater than competitive profits."[20] What Sealy does contend is that competitive strengthening of Sealy licensees for legitimate business purposes at the same time has the *effect* of enhancing inter-brand competition.[21]

In any event, the inference of anticompetitive purpose which the Government would have the Court draw is refuted by the fact that the number of Sealy licensees in the 1930's was down to eight, but by the time of trial they numbered thirty (Fdg. 32, R. 74; GX 1107, R. 1319).

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[20] Carrying its speculation a step further, the Government hypothesizes that licensees' "monopoly profits" rather than any legitimate reason "constituted the real motive for the restriction" and, based on no evidence whatsoever, it suggests that a 3% royalty rate to Sealy is unduly low (GB 24).

[21] Although the Government conceded at trial that there is "plenty of competition" in the bedding industry (note 22, *supra*), and kept out of the record evidence as to the actual effect of Sealy's licenses, it argues on the basis of hypothesis and presumption that they in fact unreasonably restrain trade. In a classic example of bootstrapping, the Government reaches the conclusion that Sealy's territory restrictions are "very much like a price-fixing agreement" (GB 15). The Government first "presupposes" that the Sealy brand is somewhat insulated from competition (GB 11); it also says one "cannot assume" that Sealy's advertising has failed to create a unique demand sufficient to provide Sealy licensees with a certain freedom in pricing when protected from intra-brand competition. However, the territory restriction would be "futile," the Government asserts, if inter-brand competition were effective; but since the licensees insist upon the restriction, this "presupposes" that it in fact reduces competitive pressures—ergo, the arrangement is like price fixing (GB 14-15). This illogical speculation typifies the Government's arguments in this case; it ignores the facts that inter-brand competition is vigorous; that Sealy licensees need the Sealy arrangement precisely because of this powerful competition (see note 57, *infra*); and that such competition governs pricing in the marketplace of all bedding products, including "Sealy."

Why, if the Sealy arrangement was designed to eliminate competition by dividing the market, were all these new licensees recruited?[32] The answer is that Sealy does not "give" licensees their territories, nor do the licensees carve them up among themselves as private domains. Sealy "sells" the use of its name and services in specified areas, and the licensees pay therefor in royalties computed on the basis of consumer buying power, which is used to measure the value of the Sealy name and services in each area (see pp. 13-14, *supra*). This is a business arrangement, serving the legitimate interests of Sealy and its licensees, and in no sense a scheme to restrain trade.

Entirely because of the licensees' stock ownership of Sealy, the Government urges the Court to ignore the separate, profitable, and independent existence of Sealy, and the useful services it performs, and infer it to be an unlawful joint venture, amounting to a conspiracy. It abandons its trial theory and the record facts and asserts that, "*while we do not argue that Sealy, Inc. was no more than a facade for a conspiracy* . . .", owing to the licensees' stock ownership in Sealy "there is no escaping the conclusion that . . .—unlike a true 'vertical' restraint—competition has *in effect* been eliminated by the action of the competitors themselves. Thus the case *closely resembles* the classic division-of-territories agreement" condemned by the *Cartel* cases (GB 12, emphasis added).[33]

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[32] Specifically, why in 1951, with licensees as nearby as Reading, Pennsylvania, and Richmond, Virginia, did Sealy have to recruit a furniture manufacturer, teach him to manufacture bedding, and license him for the Philadelphia area, and license still another firm in the Baltimore-Washington area (see Bergmann, R. 27; Fdgs. 103-05, R. 97-99)?

[33] The Sealy-brand share of the mattress business is a far cry from "cartel" proportions; the Government itself recognizes that "in the

But, even under the antitrust laws—whose thrust may not be *evaded* by the device of a jointly owned corporation[34]—the separateness from its stockholders of a corporate entity will not be ignored without solid evidence that it is a mere instrumentality or creature of its stockholders, with no separate existence of its own; mere "control" by the stockholders is not enough to "pierce the corporate veil."[35]

Here, there is no evidence that Sealy is a mere creature or instrumentality of its stockholders. The record is clear that from the very first, when promoter Edwards organized Sealy Corporation with himself and various licensees as stockholders, and some of the same persons as directors, both the stockholders and directors wore a "Sealy hat" when they were acting on behalf of Sealy. This has not changed over the years. For example, although the Kansas City licensee clearly has an interest, qua licensee, in his own territory—Kansas and a portion of Missouri (see GX

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aggregate [Sealy sales] compose but a small segment of the bedding industry" (GB 15). According to Professor Machlup, a cartel will "go to pieces if 30 or 40 percent of the market . . . [is] served by outsiders"—if the cartel consists of less than 60-70 percent of the market. MACHLUP, THE ECONOMICS OF SELLERS' COMPETITION 532 (1952).

[34] See United States v. New Wrinkle, Inc., 342 U.S. 371, 374 (1952); United States v. American Tobacco Co., 221 U.S. 106, 171-72 (1911).

[35] See Union Pac. Coal Co. v. United States, 173 Fed. 737, 739 (8th Cir. 1909); Central Retailer-Owned Grocers, Inc. v. FTC, 319 F.2d 410 (7th Cir. 1963) (receipt of discounts by corporation wholly owned by a group of retailer owned wholesale grocers held not to amount to illegal payments in lieu of brokerage in violation of Robinson-Patman Act); Nuarc Co. v. FTC, 316 F.2d 576 (7th Cir. 1963) (common ownership of two corporations by the same individual held insufficient basis for holding a payment to one to be a payment to the other in violation of Robinson-Patman Act).

1064, R. 1213-14)——he has a national interest in the welfare of Sealy, both as a stockholder and as a recipient from its professional staff of technical and advertising and sales promotion services. Whereas he might have an occasional "border disagreement" with the St. Louis or Denver licensees, he has no interest as a licensee in territorial questions involving some twenty-seven other licensees located in other areas—most of them far from his own natural trade territory (see p. 13, *supra*). Thus, stockholder-licensees, as directors of Sealy, have been motivated to act—and in fact have acted—in the best interests of Sealy, Inc. Moreover, if the occasion arose when a licensee's interest was involved, he was not permitted to participate as a director or executive committee member in Sealy's discussion or decision on the matter (see pp. 7-8, *supra*). On this basis the interest of Sealy has been served—at the expense of individual licensees where that has been necessary.

The entirely legitimate origin of Sealy, the constructive services it performs, and its unceasing efforts to recruit new licensees, improve its distribution, and expand its royalty income, as shown by the record, foreclose any inference of anticompetitive purpose in the Sealy arrangement. The evidence showing the scrupulously maintained separation between Sealy's corporate interests and the individual interests of its licensees precludes the conclusion that Sealy and its licensees are not separate entities but comprise an unlawful joint venture.

In the final analysis, the Government tried and failed to prove hard-core conspiracy. Insinuation, inference and innuendo cannot be permitted to supersede

> "the considered judgment of an able trial judge, after patient hearing, that the Government's evidence fell short of its allegations—a not uncommon form of litigation casualty, from which the Government is no more

immune than others." *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 341 (1949).

B. The Government's Evidence Shows That Sealy's Territorial Restrictions Are Ancillary to a Legitimate Primary Purpose and Do Not Unreasonably Restrain Trade

The territorial provision of the Sealy licenses does not constitute an unreasonable restraint of trade; the judgment of the trial court so holding is fully supported by the rule of reason and the venerable doctrine of ancillary restraints.

Judge Taft, later Chief Justice, reviewed the history of ancillary covenants at common law in *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 278-83 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899). He noted that the English courts long ago found it to be in the public interest to enforce certain covenants in restraint of trade, so that, for example, "after a man has built up a business with an extensive good will, he should be able to sell his business and good will to the best advantage, and . . . bind himself by an enforceable contract not to engage in the same business. . . ." (*Id.* at 280).[38] In what has become a classic statement of the ancillary restraints rule, Judge Taft pointed out that a covenant in partial restraint of trade is lawful if it

> "is merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party." (*Id.* at 282).

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[38] One of the early cases discussed by Judge Taft was Mitchel v. Reynolds, 1 P.Wms. 181, 24 Eng. Rep. 347 (K.B. 1711), which upheld an agreement by a baker not to compete for five years with the person to whom he sold his bakery. The *Mitchel* case was considered in Standard Oil Co. v. United States, 221 U.S. 1, 54, 60 (1911), as part of the body of common law establishing "the standard of reason" for interpretation and application of the Sherman Act.

The English common law was carried into the law of this country, as shown in *Oregon Steam Navigation Co.* v. *Winsor*, 87 U.S. 64, 66-67 (1873). The Court sustained a partial restraint upon the purchaser of a steamship not to use the ship in an area where it would compete with the seller's business. The Court found the covenant not unreasonable and not larger than required to protect the seller. Similarly, *Fowle* v. *Park*, 131 U.S. 88 (1889), held valid and enforceable agreements perpetually restricting the territories in which the purchasers of a secret recipe and name for a patent medicine could manufacture and sell that product. Noting that the public welfare as well as private interests were to be considered, the Court stated:

> "The question is whether, under the particular circumstances of the case, and the nature of the particular contract involved in it, the contract is, or is not, unreasonable." (*Id.* at 97, citing the *Oregon Steam Navigation* case, *supra*, among others).[37]

In the multitude of cases in which restrictive covenants have been upheld under common law rules (where no question was raised under the Sherman Act), reasonableness has remained the touchstone for judging the validity of ancillary restraints. This standard has included reasonableness as to time, including restrictions unlimited in time;[38] reasonableness as to territory;[39] and reasonableness in both

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[37] *Cf.* Apollinaris Co. v. Scherer, 27 Fed. 18 (S.D.N.Y. 1886), in which the court upheld the grant by a supplier in Hungary to a British company of the sole right to sell a product in Great Britain and America under the supplier's trademark.

[38] See cases collected in Annot., 41 A.L.R.2d 15, 41 (1955); Annot., 45 A.L.R.2d 77, 105 (1956).

[39] See cases collected in Annot., 43 A.L.R.2d 94 (1955); Annot., 46 A.L.R.2d 119 (1956).

of these aspects with respect to the general public.[40] 6A CORBIN, CONTRACTS §§1383-1394 (1962); 5 WILLISTON, CONTRACTS §§1636-1643 (rev. ed. Williston & Thompson 1937); see RESTATEMENT, CONTRACTS §§515, 516 (1932).

Under the Sherman Act as well as at common law, the courts have uniformly upheld reasonable restraints of trade where they were ancillary to a lawful main purpose of an agreement.[41] One of the early cases involved a covenant on the part of the seller of several ships to refrain from operating freight or passenger service between certain points served by the buyer. *Cincinnati, P., B.S. & P. Packet Co.* v. *Bay*, 200 U.S. 179 (1906). The Court found no violation of the Sherman Act, noting that interference with interstate commerce was not the "dominant purpose" of the contract, but that it was "made as part of the sale of a business and not as a device to control commerce." *Id.* at 184-85.[42]

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[40] See cases collected in Annot., 41 A.L.R.2d 15, 148 (1955); Annot., 43 A.L.R.2d 94, 227 (1955); Annot., 45 A.L.R.2d 77, 182 (1956); Annot., 46 A.L.R.2d 119, 263 (1956).

[41] In the *Addyston Pipe* case, *supra*, the Sherman Act was found to be violated because the restraints on competition engaged in by a combination of competitors were held to be the main *purpose* of the combination, not incidental to it; moreover, the facts demonstrated an adverse *effect* on competition. 85 Fed. 271, at 290-94; 175 U.S. 211, at 235, 238, 244.

[42] In Tri-Continental Fin'l Corp. v. Tropical Marine Enterprises, Inc., 265 F.2d 619 (5th Cir. 1959), a similar covenant was held an ancillary restriction, and "in every respect important here, reasonable in time, territory and extent, and of no further extent than is necessary to protect [the seller of the ship]; and that the authorities are almost uniform that such a restriction does not violate the anti-trust laws." *Id.* at 625. See generally, Bork, *Ancillary Restraints and the Sherman Act*, 15 A.B.A. ANTITRUST SECTION 211 (1959).

A territorially limited franchise system very like that adopted by Sealy's predecessor, Sugar Land Industries, was upheld in *Coca-Cola Bottling Co.* v. *Coca-Cola Co.*, 269 Fed. 796, 813-14 (D.Del. 1920). The developer of the formula for Coca-Cola syrup granted another concern exclusive rights to manufacture and sell bottled "Coke" under the Coca-Cola name within a prescribed territory; the bottling company in turn licensed several hundred sub-bottlers in specific territories within its overall territory. Attempting to terminate the contract with the bottling company, the original developer argued in part that if the contract were held to be perpetual by its terms, it would be void under the antitrust laws. The court held that the contract was perpetual, but not illegal; the restrictive covenants created partial restraints, merely ancillary to the main purpose of a lawful contract. Of particular interest in the present case is that court's statement that "the rights in good will and trade-mark name acquired under the contract by the bottlers were the same in character and as permanent as if . . . [the original developer of the syrup] had sold to them an established bottling business with its trade-marks and good will" (269 Fed. at 808).[43] It is noteworthy that the *Coca-Cola* case was decided about the time that Sugar Land Industries began its licensing program. See page 8, *supra*.

A number of additional decisions have upheld territorial restrictions attacked under the federal antitrust laws.[44]

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[43] Where, as here, there is no overriding illegal purpose, as the Attorney General's Antitrust Committee Report recognized, "valid trade-mark rights may provide a lawful main purpose to which reasonable restrictions on competition may be properly ancillary and therefore legal." ATT'Y GEN. NAT'L COMM. ANTITRUST REP. 87 (1955).

[44] Phillips v. Iola Portland Cement Co., 125 Fed. 593 (8th Cir. 1903), *cert. denied*, 192 U.S. 606 (1904); Cole Motor Car Co. v.

United States v. *Columbia Pictures Corp.*, 189 F. Supp. 153 (S.D.N.Y. 1960), demonstrates the continued vitality of the ancillary restraints doctrine. The Government alleged that an exclusive distribution license involving two competing producers and the distributing subsidiary of one of them was illegal per se. The court rejected this contention, holding that the doctrine stated in the *Addyston Pipe* decision permits "business arrangements of benefit to the parties, and perhaps to the public, which have no injurious effect in the sense of antitrust policy." *Id.* at 178. The court summarized the rule as follows:

> "The doctrine of ancillary restraints . . . permits, as reasonable, a restraint which (1) is reasonably necessary to the legitimate primary purpose of the arrangement, and of no broader scope than reasonably necessary; (2) does not unreasonably affect competition in

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Hurst, 228 Fed. 280, 283-84 (5th Cir. 1915) (dealer restriction not anticompetitive because of abundance of inter-brand competition); Thoms v. Sutherland, 52 F.2d 592, 593, 596 (3d Cir. 1931); United States v. E. I duPont de Nemours & Co., 118 F. Supp. 41, 219-20 (D.Del. 1953), *aff'd*, 351 U.S. 377 (1956) (restriction on a joint venture company and its parents held reasonable); Beloit Culligan Soft Water Serv., Inc. v. Culligan, Inc., 274 F.2d 29, 32 (7th Cir. 1959) (restrictions on soft water service franchisees upheld, the court noting the good will developed by the licensees in their territories through substantial investments and expenditures); Engbrecht v. Dairy Queen Co., 203 F. Supp. 714, 715, 720 (D. Kan. 1962) (licensing of soft ice cream stands); Snap-On Tools Corp. v. FTC, 321 F.2d 825, 830-33 (7th Cir. 1963) (court acknowledged lessening of intra-brand competition among tool dealers, but found that system promoted inter-brand competition); Sandura Co. v. FTC, 339 F.2d 847 (6th Cir. 1964) (floor covering distributors could not be obtained or retained without territorial restrictions); Gray Line, Inc. v. Gray Line Sightseeing Companies Associated, 246 F. Supp. 495, 501 (N.D.Cal. 1965) (restriction on right to use name "Gray Line" upheld but restriction as to operating outside licensed area under other names held unreasonable).

the marketplace; and (3) is not imposed by a party or parties with monopoly power." *Ibid.*

The Government did not appeal the decision in *Columbia Pictures*, and does not attack it now, but rather attempts to distinguish it. However, the distinction which the Government attempts to draw is based upon a "fact" that it only claims to have "shown"—that "a permanent (or very long-term) territorial restriction like that at bar is in any event broader than reasonably necessary" (GB 22 n.13). A thorough search of the evidence cited by the Government, and indeed of the entire record, demonstrates that no such "fact" has been *"shown,"* and the Government attorneys should more accurately have said, "as we have *theorized.*"

In any event, their theorizing is unsound. It fails to recognize that, although long-range elimination of *all* competition between the contracting *parties* to the sale of a business may in some circumstances be considered unreasonable, a permanent covenant by the seller not to compete with the buyer of the business *under the name sold* is common business practice and no more than fairness demands. It is the latter kind of case—where Sealy licensees are restricted only as to the areas in which they may sell under the Sealy name—that is involved here. Moreover, Sealy licenses are not permanent, but are cancellable by Sealy upon a licensee's failure to maintain adequate facilities and selling efforts. See, *e.g.*, GX 1086, R. 1302-03; pp. 13-14, *supra*.

In the recent case of *Denison Mattress Factory* v. *Spring-Air Co.*, 308 F.2d 403 (5th Cir. 1962), the territorially restricted licenses of mattress manufacturer licensees were held not to violate the Sherman Act, notwithstanding the fact that the licensees had formed the licensor corporation and jointly owned its stock. The court found that "the primary purpose of the . . . agreement was not to avoid

the antitrust laws" and that, as here, "Denison's private brand products were not affected in any material manner by the agreement" (308 F.2d at 409). Rejecting a per se rule, the court followed a rule of reason approach, observing (*id.* at 413): "[a]n agreement which strengthens and promotes competition is not a violation of the law."[45]

Citing the *Denison Mattress* case with approval, the Federal Trade Commission recently reaffirmed and applied the ancillary restraints doctrine in upholding certain restrictive clauses in the agreements of a soft ice cream franchising organization. *Matter of Carvel Corp.*, 3 TRADE REG. REP. ¶ 17,298 (Dkt. 8574, July 19, 1965).

The original Sealy license agreements are a classic example of an ancillary restraint: Sugar Land Industries sold some of its manufacturing plants and granted to the purchasers the exclusive right to continued use of the Sealy name, trademark and processes in the areas which they served.[46] It licensed manufacturing plants in other areas in exchange for royalties (see p. 8, *supra*). Sealy and the other successors in interest to Sugar Land have continued to license the manufacture and sale of Sealy products in specified territories, and to furnish highly important ad-

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[45] This decision was noted with approval and quoted by the Select Committee on Small Business in its 1963 report following an investigation of the threatened application by the Federal Trade Commission of a per se rule to cooperative advertising by independent retail druggists groups. H.R. REP. No. 699, 88th Cong., 1st Sess. 14 (1963).

[46] In its brief in the *White Motor* case, the Government conceded that such restrictions, ancillary to the sale of a capital asset, may be lawful, but distinguished restrictions on resale of commodities. See Brief for United States, pp. 39-41, White Motor Co. v. United States, 372 U.S. 253 (1963). Here, the Government erroneously compares Sealy's restrictions to the latter. See note 53, *infra*.

vertising and management services, and they have made profits on the royalties received therefor.

The exclusive territory provision is *necessary* because licensees will not invest time and money to develop production facilities, a distribution system, and consumer acceptance for Sealy products without such protection. This is true even with respect to a temporary license for an area; as a licensee wrote Sealy:

> "In view of the fact that I know you have given serious thought to turning this territory over to a new franchise, I think I would be foolish to go in there and invest in a warehouse or spend much on advertising unless I had some agreement or understanding as to how long it would be before someone else would take it over. You will certainly agree on this." GX 192, p. 3-4789*.[47]

The district court found that territorial protection is "an essential inducement to prospective licensees—to get them to undertake the obligations of a Sealy license" (Fdg. 86, R. 91-92). One of those obligations is to make a continuing investment in advertising and promoting "Sealy" in the licensee's territory. See p. 13, *supra*.

Additionally, the territorial provision is necessary to reduce the risk of confusion of the public as to the source of products marked "Sealy," or with other Sealy trademarks, *e.g.* "Posturepedic," and thus supply protection against the danger of the marks' being rendered invalid. Under the Lanham Act, a trademark is used by a manufacturer "to identify his goods and distinguish them from those manufactured or sold by others" (15 U.S.C. §1127).

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[47] Another letter to Sealy noted that "to make ourselves perfectly safe before investing too much money in this territory, most certainly want it added to our present contract so we will be sure where we stand." GX 197, R. 462; see also pp. 12-16, *supra*.

The Government is correct (GB 18) in stating that modern trademark case law permits trademark licensing of different manufacturers, provided confusion of the public is avoided by devices which assure uniformity such as quality control. But its contention that removal of the territorial restriction would in no way render protection of the trademark more difficult is a gratuitous and greatly over-simplified assertion concerning technical trademark law concepts. Trademark licensing always presents hazards to the mark's validity.[48] Any method which insures a maximum degree of sameness in the products marketed under the trademark aids protection of the mark, as the Government itself points out. But the Government does not state the key point that it is uniformity in the *same market* that counts most, for it is only in a given market that non-uniformity will be confusing to the public. Indeed, the Lanham Act permits concurrent use of a trademark by non-related companies in different areas without any uniformity requirement (15 U.S.C. §1052), thus recognizing the critical importance of separateness of the market areas in which the mark is used. Sealy's territorial licensing restrictions should be viewed in light of these concepts, and argumentative assertions by the Government are no substitute for established trademark principles.[49]

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[48] See NIMS, UNFAIR COMPETITION AND TRADE-MARKS §22 (4th ed. 1947); Denison Mattress Factory v. Spring-Air Co., 308 F.2d 403, 409 (5th Cir. 1962).

[49] In Matter of Carvel Corp., p. 38 *supra*, the FTC upheld use of ancillary competitive restrictions to insure uniformity in the relevant market, expressly recognizing that quality control alone may not be sufficient. As the Commission stated:

> "In a trademark situation, such as we are faced with here, the asserted justification for the challenged restrictions is primarily the need to achieve a specified quality of product and the avoid-

The exclusive territory provision, although containing no fixed term, is *not unreasonable* because it eliminates no competition which would otherwise exist.[50] The licensees are not competitors in the sale of Sealy-brand products until they receive their licenses, and they would not accept (or long continue to discharge) the obligations of Sealy licenses without territorial protection. Any competition, existing or potential, on their private brand goods is not affected by the Sealy licenses.[51] The district court noted that "[t]he definitions of 'Sealy products' in both the complaint and answer exclude private label bedding, and there is no allegation that any licensee was restrained in any way in his manufacture or sale of products bearing his own label" (Fdg. 4, R. 64).

The provision is *fair* because, having built up the Sealy name and good will in a certain area, and having identified goods of his manufacture thereunder, the licensee has made a substantial investment, and is entitled to protection against expropriation thereof by others offering their similar goods *under that same name.* The provision is in the *public interest* because it serves to increase inter-brand competition between Sealy licensees and manufacturers of other brands; and the Sealy program strengthens each licensee as an independent competitor with its own private-

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ance of consumer deception by supplying a uniform product at each Carvel store. Quality might be achievable by specifications whereas uniformity in all probability could not be" (3 TRADE REG. REP. ¶ 17,298 at p. 22,428).

[50] Sealy licenses are cancellable for inadequate performance (see p. 13, *supra*).

[51] Government counsel conceded that licensees sell their own-brand products outside their Sealy territories (R. 12).

brand business vis-a-vis other Sealy licensees (in their sale of both Sealy and private-brand products) and other bedding manufacturers.

II.

Adoption of a Per Se Rule in the Case at Bar Is Unwarranted and Contrary to the Public Interest

A. As in the *White Motor* Case, the Evidence Here Provides No Basis for Creating a Rule of Per Se Illegality

1. *The Government's Contentions Amount to an Effort to Reargue* White Motor

The record in the case at bar, made by the Government, totally fails to establish that Sealy's territorial restrictions have " 'a pernicious effect on competition and lack . . . any redeeming virtue' "—the test recognized by this Court for per se violations of the Sherman Act in *White Motor Co.* v. *United States,* 372 U.S. 253, 263 (1963). Indeed, as noted at pp. 17-18, *supra,* it was the Government's insistence at pretrial and at trial that it would prove a "hard-core" conspiracy that substantially prevented the discovery and offering of evidence to show "the actual impact of these arrangements on competition" (372 U.S. at 263).

Lacking evidence to show either that Sealy's manufacturing licenses were part of a scheme to divide markets, or that they in fact unreasonably restrain trade, the Government attempts to liken them to other arrangements which have been held illegal per se, and to claim that they could not be justified. Moreover, it urges that its postulations be accepted without supporting evidence, in the interests of "certainty," "simplification," and "judicial economy" (GB 9, 15, 16). The Government made almost identical arguments in *White Motor* in its unsuccessful effort to have

similar vertical territorial restrictions (imposed by manufacturers upon retail dealers) declared per se unlawful.

Thus, in *White Motor*, the Government argued that the restrictions "closely resemble" horizontal market division and resale price maintenance agreements (see 372 U.S. at 266);[52] here, it says that Sealy's arrangement "closely resembles the classic division-of-territories agreement" and is "much like" price fixing (GB 12, 15). The Court declined to accept the Government's thesis in *White Motor* since the record contained no evidence of the "purpose or effect" of the territorial restraints (372 U.S. at 263). Mr. Justice Brennan (concurring) noted significant differences between White Motor's dealer restrictions and horizontal market division, and he found the analogy to resale price agreements no less deceptive than the analogy to horizontal division of markets (372 U.S. at 267-68).[53]

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[52] Specifically, the Government argued that: "agreements between a manufacturer and his distributors providing for a division of markets among the distributors are as unlawful per se as a division among the distributors themselves" (Brief for the United States, p. 12, White Motor Co. v. United States, *supra*); and, "the anticompetitive consequences of such agreements are identical with the effects of horizontal divisions of the market" (*id.* at 18).

[53] Both in *White Motor* and here, the Government relied upon Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373 (1911), which outlawed resale price maintenance agreements (see 372 U.S. at 266 and GB 15). Mr. Justice Brennan, in his concurring opinion (372 U.S. at 268), rejected the analogy, observing that "the effect upon *inter*-brand competition is not necessarily the same as that of resale price maintenance." Donald F. Turner also distinguished the two situations in *The Definition of Agreement under the Sherman Act*, 75 HARV. L. REV. 655, 697-99 (1962). See also Note, *Restricted Channels of Distribution under the Sherman Act*, 75 HARV. L. REV. 795, 800-01 (1962). The opinion in the *Dr. Miles* case draws a distinction of singular importance in the present case. One of the prin-

The suggested distinction between *White Motor* and the instant case—that here, unlike a vertical restraint, "competition has in effect been eliminated by the . . . competitors themselves" (GB 12)—is invalid. The Government similarly argued in *White Motor* that the "effects" of White's vertical agreements were "identical with" those of a horizontal conspiracy (see note 52, *supra*). The argument was found to lack record support in *White Motor* (see 372 U.S. at 267 (concurring opinion)); here, the argument is refuted by the facts that, as shown above, (1) Sealy deals at arms length with its licensees, and (2) no competition that would otherwise exist has been eliminated (see p. 41, *supra*).

In sum, the Government seeks to relitigate the proposition that intra-brand territorial restraints are illegal per se without evidence of their economic significance, the very issue on which it lost in the *White Motor* case. Rejecting similarly speculative arguments for the establishment of a per se rule in that case, the Court reminded the Government that the " 'rule of reason' normally requires an ascertainment of the facts peculiar to the particular business." And the Court quoted a passage from *Chicago Board of*

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ciples relied on by the Court to invalidate control by a manufacturer over his customer's resale price was the public interest in "maintaining freedom of trade with respect to future sales after the article has been placed on the market and the producer has parted with his title." 220 U.S. at 403. But the Court distinguished the invalidity of a restraint upon alienation of an article of commerce from the principle that a "secret process may be the subject of confidential communication and of sale *or license to use with restrictions as to territory* and prices. *Fowle* v. *Park*, 131 U.S. 88." *Id.* at 402; emphasis added. Sealy's limited licenses of its manufacturing know-how, patents, trade name, and trademarks when originally granted were sanctioned by the Court's decision in *Dr. Miles*.

Trade v. *United States*, 246 U.S. 231, 238 (1918), that is again most appropriate in the present case:

> "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

2. *The Government's Economic Arguments Are Fallacious And No Need Is Shown For A Harsh New Rule of Per Se Illegality*

Even a superficial consideration of the facts peculiar to the business in which Sealy and its licensees are engaged, and the nature and extent of the restraint in question, reveals the unsoundness of the Government's position. Basically, the Government's aim is to force competition among Sealy's manufacturer licensees in selling "Sealy" products to dealers, just as it sought to require intra-brand competition among White's dealers in selling to retail truck buyers. And its economic "analysis" assumes that the costs and business problems which Sealy manufacturers face are the same as those of retail dealers.[54]

But Sealy's licensees are not in the position of *dealers;* Sealy's licensees are in the position of any manufacturer

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[54] GB 12, 14, 18-19. It assumes, for example, that all Sealy manufacturers have similar, relatively fixed unit costs, rather than the differing costs of different manufacturers. Some expenses, such as how much to spend on advertising in a given area, are highly discretionary.

who *sells to dealers* and whose success depends upon maintaining a dealer distribution system. Each licensee's dealers are principally furniture and department stores, and mail order houses, who, like floor covering, tool, automobile, and other dealers in advertised manufactured goods, are accustomed to and insist upon a certain "franchise" of their own in their trading areas.[55] In turn, manufacturers are somewhat selective and usually place a reasonable limitation upon the number of dealers appointed to handle their brands in a particular area, and they provide those dealers with services such as merchandising, advertising, and promotional programs.[56] The retail dealer naturally limits the number of brands of a given item he features, and works with his suppliers to develop acceptance and push the sales of their products. It is in this way that manufacturers, including bedding manufacturers, establish distribution systems for their products.

A basic question here is whether or not Sealy licensees have the right to select and place reasonable limitations on the number of dealers they will appoint in their respective territories, as integrated manufacturers concededly

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[55] See Sandura Co. v. FTC, 339 F.2d 847, 850-53 (6th Cir. 1964); Snap-On Tools Corp. v. FTC, 321 F.2d 825, 831-32 (7th Cir. 1963). In the recent *GM* case, the Government did not attack the clause in GM dealer contracts permitting limitation of the location of dealers in an area, except insofar as it was construed to prevent all sales by dealers to discount houses. Brief for the United States, pp. 33-34, United States v. General Motors Corp., 384 U.S. 127 (1966); oral argument, 34 U.S.L. WEEK 3210 (U.S. Dec. 14, 1965).

[56] Sealy licensees plan with their respective dealers various selling campaigns and promotional sales, coordinating manufacturer and dealer advertising. Fully half of the Sealy licensees' sales volume is done during planned promotional sales, local and national (Bergmann, R. 25; pp. 5-6, *supra*). The Government makes no claim that the number of Sealy dealers is inadequate, or that competition among them is not vigorous.

have the right to do. If the Government's arguments here were to be accepted, the licensees would be denied this right; the dealer relationships of each Sealy licensee would be at the mercy of neighboring licensees, and his ability to wage inter-brand competition would be jeopardized.[57]

The reason for this is plain. Dealers in a given area expect, and under the law are entitled,[58] to receive non-discriminatory treatment in connection with their purchases of merchandise. They could count on this from Simmons and other integrated manufacturers; they could not from

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[57] Numerous businessmen, including various Sealy licensees and other mattress manufacturers, testified before a Senate Antitrust Subcommittee, that exclusive territories are necessary, and make possible competition by small manufacturers against the integrated giants. *Hearings on S. 1396 Before the Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary*, 87th Cong., 1st Sess. 81-82, 86-87, 42, 45-46, 52, 57-58 (1961) [hereinafter cited as *Hearings on S. 1396*]; *Hearings on Distribution Problems Affecting Small Business, Franchising Agreements, Before the Subcommittee on Antitrust and Monopoly, Senate Committee on the Judiciary*, 89th Cong., 1st Sess., pt. 2 at 703-08, 713-15 (1966) [hereinafter *1965-66 Senate Franchise Hearings*]. Mr. Eugene Foley, then Administrator of the Small Business Administration, confirmed this necessity in his testimony before a Senate Antitrust Subcommittee:

> ". . . Hardly less important in many cases are territorial restrictions preventing each of a franchisor's outlets from selling in an area assigned to another.
>
> "Such fencing is a very effective method of encouraging each franchisee to advertise in his territory, secure in the knowledge that the soil thus fertilized will not be invaded by others. Further, it serves to direct the competitive energies of all the franchisees away from each other and against rival brands." *1965-66 Senate Franchise Hearings*, pt. 1 at 11-12 (1965).

[58] See Clayton Act, as amended by the Robinson-Patman Act §§2(a)-(f), 15 U.S.C. §§13(a)-(f).

Sealy if several Sealy licensees were (or might be) selling in an area. Thus, the dealers of one Sealy licensee could not be sure that they would receive allowances, services, promotional sales and the like, on Sealy merchandise comparable to those of other retailers who might buy (regularly or occasionally) from another Sealy licensee. Neither could they be sure—as they could be with Simmons—that a large number of additional Sealy dealers would not be appointed in the area. Moreover, Sealy dealers could not know what level of advertising and merchandising effort, if any, they could expect in the course of a selling season, in view of the fact that a neighboring licensee might "dump" Sealy goods in the area at prices reflecting manufacturing and delivery costs, but no advertising-merchandising expenses.[59] In a vigorously competitive market, what incentive would dealers have to handle and promote "Sealy" under such conditions—when normal services and more reliable relationships are available from integrated firms?

The Government attempts to minimize the fact that, without territorial restrictions, one licensee could "skim off the cream" by selling into the territory of neighboring licensees; it asserts that, owing to high shipping costs, each licensee "enjoys an inherent competitive advantage in his home area" (GB 19). This disregards other, more important elements of cost. For example, a licensee may be competing successfully against vigorous inter-brand competition with total advertising-merchandising-selling expenses of 25% of his sales dollar.[60] On a mattress whole-

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[59] Failure of the licensee to remain competitive pricewise would hasten deterioration of his dealer relationships.

[60] Sealy's Chicago licensee testified before a Senate subcommittee that his advertising-selling-administrative expenses run about 31% of sales. *Hearings on S. 1396* 80.

saling at $30.00, this amounts to $7.50. A neighboring licensee—*although incurring like expenses on sales in his home territory*—can pay several dollars of extra freight on each mattress and still sell into another licensee's territory at substantially reduced prices, and such sales will be "cost justified" because he has no advertising or merchandising expenses and minimal selling expenses thereon.[61] He takes a "free ride" on his neighbor's investment. Any short-range advantage to a few retailers and consumers from such selling would be more than outweighed by the long-range damage to the public from reduced inter-brand competition. Sealy licensees would be forced to eliminate or drastically reduce their local advertising and merchandising expenditures in support of the Sealy brand; they would soon have little alternative but to abandon "name brand" competition for "low end" (minimum quality, low priced) merchandise.[62]

The Government argues that under the Sealy arrangement, efficient licensees are penalized by not being permitted to invade the territory of other licensees (GB 20). *This is a complete fallacy.* To the extent that a Sealy licensee has manufacturing and selling ability, and efficiency, sufficient to serve an area greater than his Sealy territory, he is not restricted from doing so *on those merits and under*

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[61] Protected against "dumping" by other-brand competitors under the territorial price discrimination prohibitions of the Robinson-Patman Act (note 58, *supra*), a Sealy licensee would have little defense against such "cost justified" discriminations by neighboring Sealy licensees.

[62] Contrary to the Government's speculative assertion (GB 21), Sealy sales soon would decline, and its brand probably would disappear. See Sandura Co. v. FTC, 339 F.2d 847, 856 (6th Cir. 1964); Note, *Restricted Channels of Distribution under the Sherman Act*, 75 HARV. L. REV. 795, 811-13 (1962); Note, *Exclusive Territorial Arrangements and the Antitrust Laws*, 39 IND. L. J. 785, 791 (1964).

his own brand; he is restricted only from trading on the good will that has been built up by Sealy itself, and by other licensees, outside his licensed territory. To require, as would the Government, that a neighboring licensee be permitted to sell *Sealy* in his neighbor's territory is to encourage piracy, not competition.[63] It is precisely for this reason that territorial protection is essential if Sealy is to obtain and keep licensees.

The Government's argument that the success of Sealy, *e.g.*, through advertising,[64] may make it difficult for smaller,

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[63] Since the dissolution of Standard Oil in 1911, the separated companies have had the exclusive right to use the "Standard Oil" name and derivatives thereof, such as ESSO, in specific territories; the exclusivity of this right was recently reaffirmed in a dispute between two of the "Standard Oil" companies, in which an antitrust argument was made against the alleged resultant division of territories. Standard Oil Co. (Kentucky) v. Humble Oil & Ref. Co., 363 F.2d 945 (5th Cir. 1966), *petition for cert filed,* 35 U.S.L. WEEK 3187 (U.S. Nov. 22, 1966) (No. 765). The court of appeals said:

> *"The antitrust laws require competition, not piracy.* The essence of competition is the ability of competing products to obtain public recognition based on their own individual merit. A product has not won on its own merit if the real reason the public purchases it is that the public believes it is obtaining the product of another company. There is not now, nor has there ever been, a conflict between the antitrust laws and trademark laws or the law of unfair competition. *The antitrust laws could go no further than to envision Humble's entering the market and competing under one of its non-Standard Oil trade-names and marks. In this way Humble could obtain customers based on its own merits." Id.* at 954, emphasis added.

Accord, Humble Oil & Ref. Co. v. American Oil Co., No. 63 C 251 (2), E.D. Mo., Sept. 29, 1966.

[64] Whether or not extensive national advertising is "at best, a mixed blessing" (GB 19) might be of interest to the Congress, but it is hardly a matter for consideration in this case.

local bedding firms to compete, ignores the potential destructive effect of the relief here requested. Sealy concedes that a small company *per se* cannot spend as much money for advertising as a large national company. But the Government's argument overlooks the fact that large, integrated national firms *are* in existence, and that these companies *do* engage in national advertising (see notes 23, 24, *supra*). *Programs such as Sealy's may be the only way for small mattress companies to compete with them.*[65] If territorial restrictions are necessary to the success of such programs—as the record here plainly indicates—then pursuing the Government's argument to a successful conclusion might well eventuate in leaving the quality bedding field almost exclusively to large national firms, a result entirely contrary to rational antitrust policy.

The Government concedes that it is "often desirable to encourage new entry" by permitting temporary territorial restrictions (GB 20). Having conceded that a territorial restriction limited in time may not unreasonably restrain trade, the Government is in a poor position to contend that such a restriction becomes *per se* unlawful simply because made for a longer, or unlimited, period of time. The same reasoning that supports the desirability of *inducing* a licensee to build a new plant or invest his time and money in introducing and promoting the sale of Sealy products in an area applies to the licensee's *maintaining* that plant and *continuing* to make that investment. Indeed, he cannot reasonably be expected to make the initial investment if at the end of a few years of cultivation, the fruits of his labor and capital can be harvested, or indeed destroyed, by others.[66]

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[65] There is nothing to prevent other small companies from forming competing advertising "groups."

[66] As the Court pointed out in the *White Motor* case, territorial restrictions "may be allowable protections against competitors or the

The Government's suggestion that each Sealy licensee would receive sufficient protection and better motivation if he were merely to "shoulder primary responsibility for cultivating a particular territory" (GB 20-21) proposes a most unrealistic solution to a very real business problem. A neighboring licensee can destroy another's dealer relationships and distribution system, and eliminate his incentive to advertise and merchandise Sealy products, just as much by sporadic raids as by day-to-day competition with the Sealy brand. Moreover, if Sealy were to enforce a primary responsibility clause (particularly at the request of a licensee), a most hazardous risk would be created of an implied conspiracy.[67]

Nowhere has the Government shown why territorial restrictions such as those here should be subjected to a rigid rule of per se illegality. Such a rule would be stricter than that which would be applied under Section 7 of the Clayton Act if Sealy and its licensees, with similarly legitimate motives, had entered into a like arrangement in the form of a joint venture.[68] It would also be stricter

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only practicable means a small company has for breaking into *or staying in business*" (372 U.S. at 263, emphasis added).

[67] *Cf.* United States v. Parke, Davis & Co., 362 U.S. 29 (1960); United States v. General Motors Corp., 384 U.S. 127 (1966); see Snap-On Tools Corp. v. FTC, 321 F.2d 825, 832 (7th Cir. 1963); Stewart, *Exclusive Franchises and Territorial Confinement of Distributors*, 22 A.B.A. ANTITRUST SECTION 33 (1963). If the licensees were to maintain an "armed truce," each staying in his own area of primary responsibility, but prepared to strike back if another made the first move, the economic effect would be identical to that of the present territorial restriction.

[68] In United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964), the Court held that competitive criteria should be considered in determining the legality of a joint venture, which, contrary to a

than the rules to be applied under Section 1 or Section 2 of the Sherman Act had they completely merged their businesses and been charged with being a combination in unreasonable restraint of trade,[69] or with monopolizing trade in "Sealy products".[70] Indeed, not even the standard governing "tying" arrangements, the use of which, it has been held, "can rarely be harmonized with the strictures of the antitrust laws . . ." (*Brown Shoe Co. v. United States*, 370 U.S. 294, 330 (1962)), is so rigid as the per se rule here urged. As the Court pointed out in *White Motor*, tying arrangements "may fall in . . . [the per se] category, though not necessarily so," noting the "importance of the nature of the tying arrangement in its factual setting" (372 U.S. at 262-63).

The law as it is can without question reach schemes designed to divide markets and fix prices (see note 27, *supra*), as well as those which, in operation, result in unreasonably restraining trade.[71] The drastic per se rule for which the Government contends here would outlaw *in addition* an untold number and variety of territorial arrangements which are of substantial importance to small businessmen, as we demonstrate in the following section.

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merger, "creates a new competitive force." *Id.* at 170, 176-77. In KAYSEN & TURNER, ANTITRUST POLICY 135-41, 144, 152-53 (1959), it is pointed out that joint ventures and joint selling or buying agencies should not be governed by a per se test; such factors as the amount of market power possessed by the venture and whether the members of a joint selling agency were required to sell all of their goods through the joint agency should be considered.

[69] See United States v. First Nat'l Bank & Trust Co. of Lexington, 376 U.S. 665, 671-73 (1964).

[70] United States v. E. I. duPont de Nemours & Co., 351 U.S. 377, 395 (1956).

[71] See, *e.g.*, United States v. Griffith, 334 U.S. 100 (1948).

B. Establishment of a Per Se Rule of Illegality for Territorial Restrictions Such as Sealy's Would Contravene the National Policy Favoring Vigorous Competition and the Fostering of Small Business

The Government's arguments ignore the importance of franchising in the United States today, and would apply hypertechnicalities in the name of the Sherman Act which would directly injure competition and jeopardize the thousands of small independent businessmen engaged in franchise programs[72]—a great many of which involve territorial restrictions.[73] The Government's per se approach would preclude the courts from determining whether or not the territorial restrictions of particular franchising programs are in fact anticompetitive. If the Government's arguments were accepted here, all license contracts similar to those used by Sealy would be suspect, if not illegal, regardless of the purpose of the parties, competition in the particular industry, or the competitive effect of the license. No such result should be countenanced without solid proof of unreasonableness of the restraint involved, and the Government has utterly failed to supply such proof in this case.

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[72] *Cf.* Standard Oil Co. v. United States, 337 U.S. 293, 315 (1949) (dissenting opinion). In Brown Shoe Co. v. United States, 370 U.S. 294, 316 (1962), the Court noted the national policy favoring "'local control' over industry and the protection of small business"; see also, *id.* at 346. Here, the Government's position would favor firms with the "longest purse" and cripple "smaller independents," contrary to the principles of United States v. Paramount Pictures, Inc., 334 U.S. 131, 164 (1948); *cf.* American Column & Lumber Co. v. United States, 257 U.S. 377, 413 (1921) (dissenting opinion).

[73] See Small Business Administration Management Research Report, LEWIS & HANCOCK, THE FRANCHISE SYSTEM OF DISTRIBUTION 9, 22-24 (1963); article by the General Counsel for the International Franchise Association, Rudnick, *Arbitration of Disputes between Franchisors and Franchisees,* 55 ILL. BAR J. 54, 56 (1966); testimony of Eugene P. Foley, then Administrator of the Small Business Administration at *1965-66 Senate Franchise Hearings* 11.

Since Sealy's territorial restrictions are necessary to its survival (pp. 39, 49-50, *supra*), an order enjoining their use would tend to destroy the vigor of inter-brand competition which is furnished to Simmons, Englander, and other integrated bedding manufacturers principally by licensee groups. Such an order would virtually foreclose formation of new groups and, in other industries as well as in bedding, it might well eliminate the only effective competition provided to dominant concerns, without any showing of justification therefor on the basis of economic facts or public necessity, contrary to the Sherman Act's "essential standard of reasonableness" (*Appalachian Coals, Inc.* v. *United States*, 288 U.S. 344, 359-60 (1933)).

It is noteworthy that in recent Senate hearings the Administrator of the Small Business Administration advocated a rule of reason approach to antitrust consideration of restraints such as those here in issue, and that the Chairman of the Federal Trade Commission did likewise, in clear disagreement with the arguments here advanced by the Antitrust Division of the Justice Department.[74]

The Government classifies the Sealy organization as a joint venture and concedes that not all restrictive agreements are illegal per se if adopted in such context, citing *United States* v. *Columbia Pictures Corp.*, 189 F. Supp. 153, 178 (S.D.N.Y. 1960) (GB 8, 25-26). The decision in that case,

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[74] *1965-66 Senate Franchise Hearings* 12-14. The Chairman of the Federal Trade Commission advised the same Senate subcommittee that the FTC does not view vertical territorial restrictions in franchising agreements as illegal per se, and he cited the *Snap-On Tools* case (note 67, *supra*) as "illustrative of the importance of the factual background of a franchise program and the industry in which it operates, in determining whether or not a territorial restriction arrangement is or is not reasonable." *Transcript of Hearings on S. 2549, Exclusive Territorial Franchise Bill, Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary*, 89th Cong., 2d Sess. 173-75 (1966).

as well as those in *Appalachian Coals, supra,* and *United States* v. *Morgan,* 118 F. Supp. 621, 688-91 (S.D.N.Y. 1953), attest the flexibility of the Sherman Act to accommodate various types of joint ventures that meet business problems without anticompetitive results and without a dominant purpose of avoiding competition.[75]

It is no answer for the Government to say that the case at bar is unusual in that the licensees, in the aggregate, own most of the stock of Sealy, the licensor. If a "conspiracy" can be found under the present facts, the rule can be little different where the licensor is not so "controlled"; a manufacturer—the Government could argue, with some justification—"can fare no better with its plan of identical contracts than could the dealers themselves. . . ."[76] But, in any event, the legality of a bona fide franchising arrangement should not depend upon who owns the franchisor.

The development of the franchising system as a vital element in the American economy has met the needs of small businessmen for a means to compete with giant integrated firms. It can be compared to the evolution of the business corporation as a means for aggregating capital to meet the demands of the industrial revolution.[77] The Small Business Administration recently stated:

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[75] *Cf.* Timken Roller Bearing Co. v. United States, 341 U.S. 593, 597 (1951). See also note 68 *supra.*

[76] Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 408 (1911). The Government made this argument in *White Motor,* as we have shown (see note 52 *supra*). *Cf.* Interstate Circuit, Inc. v. United States, 306 U.S. 208, 226-27 (1939).

[77] See STOCKING & WATKINS, MONOPOLY AND FREE ENTERPRISE 417 (1951); 1 FLETCHER, PRIVATE CORPORATIONS 5-10 (rev. vol. 1963); BERLE & MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 127-52 (1948).

> "... Franchising contributes significantly to the ability of small concerns to compete effectively with larger organizations; ... it offers a relatively safe and promising haven for the small businessman; ... it provides business opportunities, otherwise unavailable, for many persons including members of minority groups, and ... it is a socially preferable alternative to the further vertical integration of the American economy since it brings to the economy and society most of the benefits and few of the evils thereof." 31 Fed. Reg. 11973 (1966).[78]

An example of the great contribution made to our society by the franchise movement is the "cooperative" and "voluntary group" grocery wholesalers movement, which has provided strong competition in food distribution for the giant integrated chain store firms. The recent report of the National Commission on Food Marketing noted:

> "The success of the chains badly hurt independent food distributors, both wholesale and retail, in the

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[78] The then Administrator of the Small Business Administration recently testified to like effect before a Senate subcommittee, concluding that, "as ... [franchising's] explosive growth indicates, it may prove to be the most effective system yet devised to counter the market domination of the chains." *1965-66 Senate Franchise Hearings* 7-8. Similarly, Judge Dawson stated in Susser v. Carvel Corp., 206 F. Supp. 636, 640 (S.D.N.Y. 1962), *aff'd*, 332 F.2d 505 (2d Cir. 1964), *dismissed because cert. improvidently granted*, 381 U.S. 125 (1965):

> "The franchise method of operation has the advantage, from the standpoint of our American system of competitive economy, of enabling numerous groups of individuals with small capital to become entrepreneurs. ... The franchise system creates a class of independent businessmen; it provides the public with an opportunity to get a uniform product at numerous points of sale from small independent contractors, rather than from employees of a vast chain." 206 F. Supp. at 640.

early decades of the century. In response, independents developed their own integrated operations. Some groups of independent retailers created cooperative wholesale units to supply them with merchandise. In other cases, wholesalers assembled 'voluntary groups' of retailers into chain-type organizations. These affiliated independent groups adopted most of the methods used by chains." FOOD FROM FARMER TO CONSUMER, REPORT OF THE NAT'L COMM'N ON FOOD MKTG 69 (June 1966).[79]

The "voluntary" heaquarters (licensor) provides its wholesaler members with the same kind of services provided by other franchisors.[80] These services—*e.g.*, in the areas of advertising and merchandising, financial aid, quality and performance standards and controls, management and accounting—enable the small wholesaler to compete effectively with the larger concerns skilled in modern marketing and business methods.[81]

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[79] Another study of the development of the food industry states that "voluntary groups . . . were a direct reaction to the encroachment of the corporate chains. The pioneer organizations—IGA, Red and White, Clover Farm, and others—were, in effect, national or regional headquarters organizations for the local voluntary wholesale grocers." HAMPE & WITTENBERG, THE LIFELINE OF AMERICA 299 (1964). See PALAMOUNTAIN, THE POLITICS OF DISTRIBUTION 79 (1955): "Arising in the 1920's, [voluntary chains and retailer cooperative warehouses] . . . attempted to secure for independent grocers many of the advantages of chains. They were designed to preserve individual store ownership and yet permit retailers to copy many chain methods, . . ." See also MUELLER & GAROIAN, CHANGES IN THE MARKET STRUCTURE OF GROCERY RETAILING 37-47 (1961).

[80] *Compare* FTC STAFF REPORT, ECONOMIC INQUIRY INTO FOOD MARKETING pt. I, at 214 (1960), *and* HAMPE & WITTENBERG, *op. cit. supra* note 79, at 306-11, *with* LEWIS & HANCOCK, *op. cit. supra* note 73, ch. III, *and* FRANCHISING TODAY (Vaughn & Slater ed. 1965).

[81] See LEWIS & HANCOCK, *op. cit. supra* note 73, at 67-69; MUELLER & GAROIAN, *op. cit. supra* note 79, at 106-08; *1965-66 Senate Franchise Hearings* 7-9.

Since 1947, while sales by wholly independent grocers have greatly declined, sales by retail grocery stores affiliated with cooperatives and voluntaries have grown rapidly until they now approximate the total chain store sales volume.[82]

In 1958, Independent Grocers' Alliance (IGA), one of the "national headquarters" groups, had 53 affiliated sponsor-wholesalers, who in turn dealt with 4,493 sponsored retail stores.[83] Each of these wholesalers was exclusively licensed as an IGA wholesaler within a designated territory, and was expressly prohibited from selling IGA merchandise and from enrolling stores as IGA retailers outside of its territory.[84] Such territorial restrictions are common, as indicated by authorities previously cited (*supra* note 73), and, of course, where the licensor is cooperatively owned by sponsor-wholesalers, the situation is not unlike that complained of here.[85]

The Government's attempt to create a rule of per se unreasonableness for testing restraints such as those in the Sealy license agreements should be rejected. Only a rule of reason approach will provide a necessary measure of protection for the numerous franchising programs that have developed in the United States. These programs are

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[82] HAMPE & WITTENBERG, *op. cit. supra* note 79, at 306-07; see FOOD FROM FARMER TO CONSUMER, *op. cit. supra* p. 58, at 70.

[83] FTC STAFF REPORT, *op. cit. supra* note 80, at 214-15.

[84] FTC STAFF REPORT, *op. cit. supra* note 80, at 315-20.

[85] *Cf.* Denison Mattress Factory v. Spring-Air Co., 308 F.2d 403 (5th Cir. 1962), p. 37, *supra*, in which territorial licenses were upheld, notwithstanding ownership of the licensor by the licensees. In the *Gray Line* case, *supra* note 44, and Wilbert W. Haase Co. v. Sultz, 43 TRADEMARK REP. 841 (W.D.N.Y. 1953) (burial vaults), the licensees also owned the licensor. See also, Central Retailer-Owned Grocers, Inc. v. FTC, *supra* note 35.

not designed to eliminate competition and typically do not possess significant market power; on the contrary, they may constitute the nation's best hope for preserving competition and avoiding increased concentration of market power in the hands of the few in many lines of commerce.

III.

Justice Requires that the Government Be Barred from Injecting Its New Theory of Per Se Illegality into this Case for the First Time on this Appeal

As we have shown, because the Government insisted upon its theory of per se violation of the Sherman Act and was successful in blocking Sealy's efforts to discover and present evidence as to industry data (see pp. 17, 42, *supra*), Sealy was not permitted to develop and adduce proof of the economic justification for and the procompetitive effect of its licensing program. Unquestionably, had the Government revealed to the trial court that it was not relying entirely upon a theory that Sealy and its licensees were engaging in a conspiracy, the central and main purpose of which was to allocate territories and suppress competition among Sealy licensees, pretrial discovery and the taking of evidence would have followed a different course. Had the Government informed the court that, absent proof of a hard-core conspiracy, it was also contending that the territorial restrictions (irrespective of the purpose or intent of Sealy and its licensees) amount to a per se violation of the antitrust laws by virtue of the substantial ownership of Sealy stock by the licensees, the trial court undoubtedly would have permitted Sealy to discover and present proof as to the actual impact of the territorial restrictions upon competition.

But, having chosen its hard-core theory of conspiracy intentionally aimed at restraining competition, and having utterly failed to prove it, rudimentary principles of law

and justice dictate that the Government should not now be permitted to argue its case on a new theory, relying on inference and innuendo in place of evidence it kept out of the record.

If the trial court had prevented the Government from trying to show that in actual effect and practice Sealy's territorial restrictions were unreasonable restraints of trade, the situation might be different. But here the Government at all times insisted that such matters were wholly irrelevant and succeeded in obtaining rulings by the lower court preventing discovery and presentation of such matters by Sealy. Under these circumstances, the Court should not entertain the Government's new theory on the same principle as that stated in *Giordenello* v. *United States*, 357 U.S. 480, 488 (1958):

> "We do not think that these belated contentions are open to the Government in this Court and accordingly we have no occasion to consider their soundness. To permit the Government to inject its new theory into the case at this stage would unfairly deprive petitioner of an adequate opportunity to respond."[86]

Moreover, sound judicial administration precludes a remand for the Government to attempt to prove its new theory to the district court. Sealy has been tried and found not guilty of the charge against it. For the Government to be given another opportunity—a "fourth strike"—to attempt to prove some theoretical anticompetitive effects from its licensing system would amount to harassment of a company that can ill afford such repeated litigation.[87]

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[86] *Cf.* Lawn v. United States, 355 U.S. 339, 362 n.16 (1958); Duignan v. United States, 274 U.S. 195, 200 (1927).

[87] Obviously, having conceded at trial that there was "plenty of competition" in the bedding industry, the Government had no evidence that Sealy's arrangement in fact unreasonably restrained trade.